

ABOLISHING THE COUNCIL ON ENVIRONMENTAL QUALITY

4. P 93/10: S. HRG. 103-79

Abolishing the Council of Environne...

HEARING BEFORE THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

SECTION 112 OF S. 171—TERMINATION OF THE COUNCIL ON
ENVIRONMENTAL QUALITY AND TRANSFER OF FUNCTIONS

APRIL 1, 1993

Printed for the use of the Committee on Environment and Public Works



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ABOLISHING THE COUNCIL ON ENVIRONMENTAL QUALITY

THURSDAY, APRIL 1, 1993

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, D.C.

The committee met, pursuant to notice, at 9:45 a.m. in room SD-406, Dirksen Senate Office Building, Hon. Max Baucus [chairman of the committee] presiding.

Present: Senators Baucus, Durenberger, Boxer, Faircloth, Wofford, and Chafee.

OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. I am pleased to welcome back Administrator Browner to the committee. This is becoming a daily occurrence, Ms. Browner.

Today the committee will consider an important part of the President's effort to streamline the Federal Government.

In February, the President announced that he was reorganizing the environmental functions of the Executive Office of the President. The objectives were simple: to save money and reduce the number of White House employees. As part of this effort, the President proposed to disband the Council on Environmental Quality, shift some of its functions to the new cabinet-level Department of Environment, and retain the rest of its functions in a leaner White House Office of Environmental Policy. By doing so, the President's proposal will save over \$2.5 million and eliminate 31 personnel slots.

At the same time, the proposal raises several questions and we're here to address them. The Council on Environmental Quality coordinates the Government's compliance with the National Environmental Policy Act, which some call the Magna Carta of Federal environmental law. We must be careful in considering how this important function will be handled if CEQ is abolished. That's the purpose of today's hearing.

Three main concerns have been raised. First, whether one Federal agency, the Department of Environment, can effectively supervise NEPA compliance by other agencies. Under the President's proposal, the new department will be responsible for issuing NEPA regulations and making sure that other agencies comply. This is not an entirely new role. The EPA already has more NEPA compliance authority than any other Federal agency. Section 309 of the

Clean Air Act, for example, enacted in 1970, authorizes the EPA to review and comment on the environmental impact of any projects that come under the purview of NEPA, or on any proposed legislation or regulation.

In addition, the very purpose of the new Department of Environment is to give greater emphasis to environmental protection. Of all Federal agencies, the new department is best equipped to assure adequate compliance with NEPA and/or other environmental priorities. The most difficult question is how disputes between agencies should be resolved. What if the Environment Department disagrees with the Interior Department? The answer is that the President should resolve the disputes, as he does now. Under current law, CEQ can only review interagency disputes, but the final decision-making authority rests with the President, as it should. The legislation we are considering today will not change this.

The second concern that has been raised is the impact of the abolition of CEQ on other environmental laws. CEQ is referred to in many statutes. However, its functions under these statutes are to review environmental impact statements, make personnel recommendations, and receive reports from other agencies. All these functions can be responsibly and reasonably absorbed by the new department, or retained directly by the President.

The third and perhaps most significant concern is whether EPA is really up to the job. Some critics say that EPA's own NEPA performance has fallen short—you shouldn't be the cop on the beat, they argue, unless you're a law abiding citizen. This is a serious concern. Granted, courts have upheld the concept of functional equivalency, so that in some cases EPA does not have to comply with the letter of the law, as long as it complies with the spirit of the law. In other cases, we in Congress have explicitly exempted EPA from NEPA, such as in the Clean Air Act and in the Clean Water Act. Even so, the EPA can do a better job and, as a cabinet-level it will have a special obligation to do better. I've raised this issue with Administrator Browner and I'm satisfied that EPA's NEPA performance will improve. In fact, Administrator Browner has committed to us to complete a review of EPA's compliance activities to ensure that full NEPA compliance is, in fact, a reality. The complete text of her letter will be included in the record. (See p. 4.)

I applaud her initiative in this area. We cannot hold Administrator Browner accountable for the failures of the past. She has been clear with me from the beginning of her term as Administrator that she accepts responsibility for actions of EPA during her tenure, and I'm confident she will more than meet that responsibility.

With the elevation of EPA to cabinet status, we have the unique opportunity to consolidate the important environmental functions of the Federal Government under one roof. We have a new EPA Administrator and soon-to-be Secretary of Environment, who has demonstrated her commitment and her ability to raise the standards of environmental protection in this country to new levels. And, we have a new President who is committed to streamlining Government and making it more efficient and effective, and I support their efforts.

I thank Ms. Browner and the other witnesses for attending this morning's hearing and taking the time to participate. I look forward very much to her testimony and to the testimony of every other witness here with us. Now I'd like to turn to Senators from this committee for very brief statements. I understand Ms. Browner, again, has to leave. This time I think it's around 10:30 a.m., so I encourage members to be very brief, so we have the opportunity to hear from the Administrator.

[The letter from Administrator Browner, previously referred to follows:]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 31 1993

THE ADMINISTRATOR

Honorable Max Baucus
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D. C. 20510

Honorable John Chafee
Ranking Minority
Committee on Environment and
Public Works
United States Senate
Washington, D. C. 20510

Dear Senators Baucus and Chafee:

As I assume my tenure as the Administrator of the Environmental Protection Agency (EPA), I believe it important to reaffirm the Administration's commitment to our landmark environmental law, the National Environmental Policy Act (NEPA).

The purposes and priorities expressed by the Congress in enacting NEPA on January 1, 1970, mirror the fundamental principles that will guide a new environment Department. As an equal member of the President's Cabinet responsible for making national decisions affecting such cross-cutting matters as the economy, energy, transportation, agriculture, and defense, an environment Department will serve to reinvigorate NEPA and other Federal environmental laws.

NEPA was enacted to ensure that environmental considerations were included as an early priority in Federal decisionmaking. Now, twenty years later, it is time to create an environment Department tasked with implementation of NEPA at the Cabinet table as both an early and top priority in Federal decisionmaking.


NEPA's philosophical foundation also provides the essential basis for an environment Department. "Productive harmony" between humans and nature, "interrelations of all components of the natural environment," "ecological systems," the link between environmental quality and human welfare and development, and concern for "present and future generations" are not rhetoric but a framework for policy and decisions.

Just as the policies and programs flowing from NEPA have grown, EPA has matured in carrying out its mission as the Nation's top environment steward. EPA is firmly committed to pollution prevention and cross-media approaches that consider ecological systems as a whole using systematic, interdisciplinary methods. This commitment will enable the new Department to take NEPA's express purposes to their logical next step of better environmental management through a broader, multi-media approach. An environment Department will have the scientific and technical expertise, resources, and accountability appropriate to ensure the vigorous implementation of NEPA that the environment deserves.

Whatever one's perspective, however, EPA should not rest on its laurels, ignore past deficiencies, or passively accept its new responsibilities. I have assigned an intra-Agency workgroup the task of examining how the Department can improve the use of the NEPA mandate to achieve the Department's goals of better environmental management among its major programs. It is time for EPA as an agency to reaffirm NEPA's goals as an integral part of the EPA culture and ethic and the way we conduct our business. In addition, it is essential that the Congress and public have a better understanding of how EPA's unique environmental mission integrates NEPA's values and priorities in what courts have upheld as EPA's "functionally equivalent" programs. My expectation is that within six months the workgroup will review existing procedures, make recommendations for improvement where necessary, and develop an Agency statement of policy that clearly articulates how EPA's program requirements should function to further NEPA's purposes.

To better frame our discussions, I have enclosed in this letter fact sheets outlining NEPA's applicability to EPA programs, and EPA's considerable implementation experience carrying out interdisciplinary review of other agencies' proposed legislation, regulations, and Environmental Impact Statements under both NEPA and Section 309 of the Clean Air Act.

We take NEPA seriously in our own behavior and as an environmental advocate. I know I can count on your Committee's counsel as we undertake our review. I look forward to working together in this effort.

Sincerely,


Carol M. Browner

Enclosures

EPA PROGRAMS AND THE NATIONAL ENVIRONMENTAL POLICY ACT

- * EPA prepares environmental impact statements (EISs) or environmental assessments (EAs) under NEPA for:
 - new source water pollution discharge permits in twelve undelegated states and the outer continental shelf
 - wastewater treatment construction plants
 - EPA facilities
 - research and development activities
- * EPA prepares EISs voluntarily on:
 - designation of ocean disposal sites
 - Clean Air Act new source standards and hazardous air pollution standards
- * EPA has prepared EISs and EAs on a wide variety of sources:
 - wastewater treatment plants
 - mines (including coal, molybdenum, gold, phosphate)
 - gas and coal fired electric plants
 - ocean disposal
 - industrial facilities
- * In FY 1990, for example, EPA issued 34 EISs, the fifth highest for any agency or department in the government.
- * Congress has specified by statute that NEPA does not apply to EPA actions under the following laws:
 - o Clean Air Act: all EPA actions are exempt from NEPA. See 15 U.S.C. § 793(c)(1).
 - o Clean Water Act: all EPA actions are exempt from NEPA except for wastewater treatment construction grants and EPA-issued new source NPDES permits. See 33 U.S.C. § 1371(c)(2).
- * The courts have consistently held that NEPA's EIS requirement does not apply to EPA programs that already provide the "functional equivalent" of a NEPA review. This exception applies in the following programs, which require an orderly review of environmental issues and public participation independent of NEPA:
 - o Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k
 - o Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136-136y
 - o Toxic Substances Control Act, 15 U.S.C. §§ 2601-2671
 - o Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675
 - o Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j-26

EPA REVIEWS OF OTHER FEDERAL AGENCY ACTIONS
UNDER SECTION 309 OF THE CLEAN AIR ACT AND
THE NATIONAL ENVIRONMENTAL POLICY ACT

- * NEPA calls for interagency review of environmental impact statements (EISs) by expertise and jurisdiction.
- * Section 309 of the Clean Air Act specifically requires EPA to:
 - review and comment in writing on the environmental impact of federal actions that may significantly affect the environment, proposals for legislation and proposed regulations.
 - refer to the Council on Environmental Quality (CEQ) any matter determined to be unsatisfactory from the standpoint of public health, welfare or environmental quality.
- * Examples of Projects/Programs Reviewed
 - western water contracting - Bureau of Reclamation
 - timber sales, grazing, mining, oil & gas leasing - Bureau of Land Management and U.S. Forest Service
 - port development, navigation and flood control projects - U.S. Army Corps of Engineers
 - hydropower relicensing and gas transmission lines - Federal Energy Regulatory Commission
 - highways, transit projects, and airports - Department of Transportation Agencies
 - nuclear power plant relicensing and decommissioning - Nuclear Regulatory Commission
 - integrated environmental restoration and waste management and the nuclear weapons complex reconfiguration - Department of Energy
 - base closure and reuse - Department of Defense
- * Under Section 309 last year EPA reviewed 464 EISs.

EPA MANAGEMENT OF THE EIS FILING SYSTEM

- * Under a 1977 agreement with CEQ, EPA publishes Federal Register notices of the availability of all draft and final EISs, keeps a computerized record of all EISs and maintains copies of EISs, in coordination with the National Archives.
- * Last year 512 EISs were filed under section 1506.9 of CEQ's NEPA regulations.

Senator BAUGUS. Senator Durenberger?

**OPENING STATEMENT OF HON. DAVE DURENBERGER, U.S.
SENATOR FROM THE STATE OF MINNESOTA**

Senator DURENBERGER. My statement begins by saying, "I hope no one says the issue here today is Government spending, that we ought to abolish CEQ as a way to cut 20 or 30 jobs from the Executive Branch." You went ahead and said it, Mr. Chairman.

I don't want this statement to sound harsh, but it's going to probably come off with just a little bit of that sort of ring to it, but you know that there are at least a couple of us on this side of the aisle that feel fairly strongly about this issue.

Just before we adjourned last night, the Senate rejected the Danforth amendment that would have reduced Government spending by cutting the Amtrak portion of the stimulus package. Our colleague wanted to save us \$180 million, which would have financed CEQ for 70 years. That's the reason I don't buy this notion that you're saving money with this change. The Senate has been voting all week to throw money at Federal agencies, all to conduct activities so unimportant that they weren't even funded in the 1993 appropriations. These projects are not justified solely because they make jobs. In that kind of climate, nobody should come here this morning and justify cutting an important function like the CEQ to get rid of jobs.

I hope no one says environmental policy making will improve by placing CEQ with a deputy assistant to the President sitting in a White House office—that was my hope-on-the-rope statement.

[Laughter.]

Senator DURENBERGER. I just heard from the Chairman that that's the committee's commitment that he has from the EPA Administrator. President Bush had a Deputy Assistant for Environmental Policy and CEQ, too.

CEQ has two functions, as the Chairman has outlined. One is to coordinate and mediate the environmental policies and disputes of all departments and agencies. That's a function that can't be performed by EPA, even as a cabinet department. I think someone who is wise on that subject will testify to that issue later.

The second function is to oversee the faithful implementation of the National Environmental Policy Act. That function is now being transferred to the bowels of the EPA. NEPA is not just another part of the governmental plumbing—it is a jewel. It is appropriate that it be watched over by an agency with that function alone, headed by Senate-confirmed officers. I heard what the Chairman said about the EPA Administrator—I believe what he said, I believe the Administrator—but I've been here for 14 years, hearing these same sort of commitments from Administrators, and in good faith they make them.

[Laughter.]

Senator DURENBERGER. They've got a lot of other things to do, too. NEPA is not just another part of the governmental plumbing. It is a jewel. So no one should say that we are here to improve upon the environmental functions of the Federal Government.

The real issue this morning appears to be solidarity in the Democratic Party. It is an issue that I'm going to talk about.

When you watch the TV news program 60 Minutes, you know you've been introduced to a real villain when Mike Wallace says, "We asked Mr. So-and-So of Such-and-Such Corporation to appear on this program. He refused our invitation." And you think to yourself, "Shame on you, Mr. So-and-So."

For the hearing today, we asked the CEOs of every major environmental organization in America to appear and they all refused. Shame on them.

If this had been a proposal made by Ronald Reagan or George Bush, we'd be here all day long, listening to environmentalists praise the 20-year record of CEQ and excoriating the Republican President.

But today, they refused our invitation and I say, "Shame on them."

Going up against the wishes of a President in your own party is a painful experience for a United States Senator. There are members of this committee on this side of the dais who can tell you a lot about that experience. Maybe it's divided Government versus undivided Government—I'm not quite sure. Maybe Max is right. Maybe this is the better way to have political responsibility.

I have sat here and watched for the last 12 years as first Bob Stafford and then John Chafee steadfastly defended the work of this committee and the health and environmental interests of this Nation, frequently in contradiction to the interests and wishes of their President and their party caucuses.

The legacy of John Chafee's and Bob Stafford's steadfastness is the bipartisan tradition of this committee. People say a lot about the EPW Committee—one thing they always say is that its leadership for the environment has been bipartisan.

The bipartisanship that we've enjoyed for the last twelve years was paid for by Bob Stafford and John Chafee every Tuesday at Republican lunches. Standing up for environmental causes at the weekly Republican caucus takes determination that is perhaps under appreciated by those who haven't tried it. I remember in July of 1988, when I used the occasion of one of these Republican caucuses to advocate cabinet status for the EPA. Hooting is a fair description of the response that I received. I think John was my only supporter.

If the bipartisan tradition of our committee is to continue, we're going to need Bob Staffords and we're going to need John Chafees on the other side, too. We need you now, the Democrats, we need you. You can say to yourself, "I know that I may have to break with my President to protect the environment at some point, but I'm going to wait until it's really important and this isn't that important."

I think this is really important and I think we ought to start now.

Thank you, Mr. Chairman.

Senator BAUCUS. Thank you, Senator.

Next in order of appearance—and, again, I urge short statements—Senator Boxer.

**OPENING STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR
FROM THE STATE OF CALIFORNIA**

Senator BOXER. Yes, Mr. Chairman. I'm going to make this as fast as I can, hopefully two minutes. I'm sorry that the Administrator can't stay longer, because I think this is a very important issue and maybe Senator Durenberger will be happier after he hears my remarks.

I do not question this President's or Vice President's commitment to the environment. I think when Carol Browner was appointed, that was a tremendous vote of confidence in the environment. So, I have no question about their motivation here.

But, I have some questions about this proposal. I believe that the proposal to abolish the CEQ should be very carefully considered and executed only after all significant concerns have been resolved.

Chief among those concerns is what happens to the new Office on Environmental Policy when and if a less environmentally sensitive President were to take office. I, for one, was pleased to see President Clinton take action in the first days of his term to abolish the Council on Competitiveness. But, just as such quick Presidential action can favor the environment, it can also go the other way. I will therefore look forward to hearing from our distinguished witnesses as to how we can ensure that a future President cannot just as easily abolish the Office on Environmental Policy.

While the influence and effectiveness of the CEQ has, no doubt, ebbed and flowed with politics, I think it's wise to remember that it's a statutorily based institution that has survived long periods of Presidential disinterest.

Before it's abolished, I think we need to consider whether we are replacing the CEQ with a body that, in the long run, will have more or less ability to shape the Nation's environmental policy. This is an important question and one that I hope the hearing will answer for me. I'm troubled by this and I hope that after this hearing I'll be less troubled by it.

Mr. Chairman, thank you.

[Subsequent to the hearing, Senator Boxer submitted, for the record, a statement, that statement follows:]

**STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM THE STATE
OF CALIFORNIA**

Mr. Chairman, as I stated at yesterday's hearing on the President's proposal to abolish the Council on Environmental Quality, I have several concerns about this component of the legislation to restructure the Environmental Protection Agency. I appreciate having this opportunity to express those concerns for the record.

First Mr. Chairman, I want to reiterate my genuine appreciation for your commitment to ensuring that environmental protection is not compromised by this, or any proposed action. I also want to reiterate how pleased I am to be dealing with a President and Vice President who have made environmental preservation a first priority of their administration. While we may disagree at times about specific approaches or strategies, I think it is important to remember that we share a common goal with regard to the environment.

I am convinced that the goal of environmental protection is advanced by the President's proposal to make the EPA a cabinet level Department. I agree with the President, and will do everything I can to support him in this effort.

I am not equally convinced, however, that the proposed abolition of the CEQ, without a provision for a statutorily created replacement within the Executive Office of the President, is in the best long-term interests of environmental protection.

As I indicated to EPA Administrator Browner at yesterday's hearing, I believe the long-term interests of the environment would best be served by statutory creation of an Office on Environmental Policy, with a director selected by the President with the advice and consent of the Senate. I believe that Office should have responsibility for the National Environmental Policy Act functions now carried out by the CEQ. I also believe that the dispute resolution process performed by the CEQ should remain with an independent, statutorily created body within the Executive Office of the President. I am convinced that this approach would best ensure that, over the long-term, the environment will always have a voice in the White House, no matter who occupies the White House.

I understand that for a variety of reasons this view is not going to prevail. I am pleased to report to the Committee however, that I have received a commitment from the White House that the Office on Environmental Policy will be created by Executive Order, to be issued by the President simultaneously with the abolition of the CEQ. This Executive Order will specify that among the functions of the new OEP will be to assist the President in ensuring that his proposed programs and decisions are consistent with NEPA. While this does not go as far as I would like to create the kind of permanence I think is called for, an Executive Order is a step in the right direction.

Mr. Chairman, on a final note, I am hopeful that the President's proposal results, not only in a beneficial "streamlining" at the White House, but also in a genuine improvement in federal environmental protection. Thank you Mr. Chairman.

Senator BAUCUS. Thank you. Senator Faircloth?

OPENING STATEMENT OF HON. LAUCH FAIRCLOTH, U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator FAIRCLOTH. Thank you, Mr. Chairman. Ms. Browner, nice to see you again today.

As you know, my focus on this committee and others is reducing the deficit. Abolishing the Council on Environmental Quality is said to be a \$2.56 million cost cutting measure. If that is so, then more power to it. But I do not want to cut one vine of the bureaucracy and see another one grow elsewhere. The White House, for instance, with the new commission. Thank you.

Senator BAUCUS. Thank you. Senator Chafee?

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Thank you, Mr. Chairman. First of all, I want to commend you for bringing this legislation before this committee. As you know, there are some who would have it go directly from the Governmental Affairs Committee, right to the floor and you insisted on exercising our jurisdiction. I want to commend you for it and say I support you in that.

Now we all know that the administration is anxious to have us vote on this before the recess which, in theory, begins tomorrow. I personally don't understand what the tremendous hurry is but, nonetheless, there is some hurry. I want to assure the witnesses who will be coming before us that the decisions reached, at least as far as this Senator goes, is not a foregone conclusion. We're going to carefully evaluate what you have to say and proceed from there.

I haven't seen the full witness list, but I see Mike Deland here and that's good because he certainly has had some experience in that area.

I do know that because of conflict and the short notice that the Honorable Russell Train, who was the first Chairman of CEQ from 1970 to 1973, and the second Administrator of EPA from 1973 to

1977, and is current Chairman of the World Wildlife Fund, could not be here. He asked me to mention to you, Mr. Chairman, and others, that he's very concerned about the proposal to abolish CEQ, and to submit for the record a copy of his letter to you dated March 30 of 1993.

Senator BAUCUS. Without objection, his letter will appear in the record. (See p. 14.)

Senator CHAFEE. I must admit, Mr. Chairman, when the idea of eliminating CEQ this was first proposed I, for one, didn't fully appreciate the significance or the controversy.

I have grave concerns, as I have indicated to you. This Administration may be viewed by the outside as one that's very friendly to the environment—and that's splendid—but there can well be Administrations to come along that aren't friendly to the environment. The question is, what entity is going to be in the office of the President who is going to speak up for the environment?

Now, you can say, "Oh, well, we've succeeded in having the head of the EPA in the cabinet, so there's somebody who can speak up." But that's just one more department whereas, in the existing system, even if you had an Administration that wasn't totally friendly to the environment, you'd have right there in the old executive office building, right handy, the head of CEQ.

How you designate the office doesn't seem to me to be all that important. There are some suggesting that if you don't have a CEQ, have some successor to it—Office of Environmental Policy—in the White House. Then you get to the argument of what the statutory status of that office is. I personally believe that an Office of Environmental Policy should be statutorily established.

That doesn't mean that the occupant of the office has to be confirmed by the Senate. I understand the administration's worries about that and I'm willing to set that aside. But, I think you would want something that is thoroughly established in the White House that represents the environment.

Others have said not to have it statutory, that it would be established by executive order of the President. That's okay. Except, of course, that another President can come in and quickly abolish it. The answer to that is if he abolishes it, that would be a very high profile action and would be looked on with some concern by environmentalists and a President wouldn't likely undertake it.

So, those are some of the questions that I'd like answered as we have those witnesses appear before us. If you have an office established by executive order, is that anything? If you have an office that is established statutorily, without the occupant being confirmed by the Senate and not having all the existing duties of CEQ, does that amount to anything? These are the questions that I'd appreciate the witnesses addressing.

Thank you very much, Mr. Chairman.

Senator BAUCUS. Thank you very much, Senator.

Senator CHAFEE. Also, I want to thank the distinguished Senator from Minnesota for his kind comments. If we've endured some shell shocks in the Republican caucuses on occasion, at least there's always two of us there.

[Laughter.]

Senator CHAFEE. So, we could shrug off some of the shell and shocks to the other, which is always very comforting. Thank you.
[The letter from Russell Train, previously referred to follows:]

March 30, 1993

The Honorable Max Baucus
Chairman
Committee on Environment and Public Works
United States Senate
458 Dirksen Senate Office Building
Washington, D.C. 20510-6175

Dear Mr. Chairman:

With respect to S.-171, I am writing to express my strong concern over the proposed abolition of the Council on Environmental Quality (CEQ). My views are primarily my own as the first Chairman of CEQ (1970-1973). However, this letter is also intended to reflect the views of the National Commission on the Environment which met over the past 2 years and which I had the privilege of chairing. The National Commission on the Environment was a private sector, bipartisan effort convened by World Wildlife Fund. Its 19 members included four former EPA administrators and two former CEQ chairmen. The Commission's report, *Choosing a Sustainable Future*, was released this past December. A summary is enclosed.

In my opinion, abolishing the Council and substituting it with a non-statutory staff office in the White House will undermine implementation of the National Environmental Policy Act (NEPA) and weaken our ability to achieve essential environmental goals for the future.

Significantly, the National Commission expressly recommended that

The Council on Environmental Quality should be strengthened and revitalized.¹

¹ Similarly, the Carnegie Commission on Science, Technology, and Government found that a "robust, analytically sophisticated, and influential Office of Environmental Quality [which was created by the Environmental Quality Improvement Act of 1970] is a critical component of the White House policy-making apparatus" in its report, Environmental Research and Development, Strengthening the Federal Infrastructure (New York 1992) p. 58.

The Honorable Max Baucus
 March 30, 1993
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Strengthening CEQ was part of an overall strategy described in our report to make environmental considerations fundamental to all government policies. In our view, it is essential that environmental protection no longer be considered a separate and external concern pursued in isolation from other policies such as energy, agriculture, and transportation. Environmental considerations are as integral as economic concerns and must be integrated into the development and implementation of policies in these other areas from the beginning. Energy, transportation, and agricultural systems that are not based on sound environmental values will fail in the long run. They simply will not be sustainable.

Unless we accept the principle that environmental considerations must be integrated into all government policy areas, we are doomed to dealing with environmental problems on an ad hoc and piecemeal basis, usually as an emergency response and often without long-term significance. Likewise, we will perpetuate tensions and false dichotomies such as economic growth versus environmental quality, jobs versus the environment, owls versus people, humanity versus nature.

The time has come to bring about fundamental change in the way we deal with the environment. It will not be easy. Our government is divided into functional compartments, each jealous of its own role and with entrenched bureaucracies resistant to change. Our Commission recognized that strong, continuing Presidential leadership would be required. On this point, our report stated:

The time has come for leadership to spearhead the effort to incorporate the environmental dimension into all policy areas. Presidential commitment is essential to achieve this goal; at the same time, however, it cannot be subject to the momentary vagaries of political change. Each administration will require the continuity, analysis, and structures that can give enduring substance to the integration process. (p. 47)

The latter part of this quotation is of particular relevance to the subject at hand. I have absolutely no reason to doubt the environmental commitment of the new Administration. Nonetheless, we all know that such commitments can and do change from Administration to Administration and, indeed, during an Administration under the pressure of changing events. (Thus, the generally pro-environment policies of the Nixon Administration during the period 1969-1972 shifted radically in 1973 with the Arab oil embargo and the resulting oil crunch.)

Therefore, I believe in principle that eliminating the statutory Council on Environmental Quality and substituting for it a White House Office of Environmental Policy which is created--and susceptible to destruction--by order of the President, is a backward step. This action would dismantle significantly the landmark National Environmental Policy Act that created CEQ and that constitutes one of the historic achievements of U.S. environmental policy. It would also seriously impede the integration of environmental concerns throughout government.

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The existing Council on Environmental Quality oversees federal agency implementation of NEPA, including the resolution of interagency disputes on environmental matters. It is imperative, in my view, that responsibility for monitoring federal agency performance under NEPA be vested in a statutory office, one which carries with it Congressional oversight. Anything less could seriously weaken and perhaps ultimately destroy the authority of NEPA.

To transfer the NEPA oversight and implementation functions either to EPA or to a new Department of the Environment is not a practical solution. Long experience has demonstrated that the ability of any one line agency or department to give real direction to other agencies is very limited. Indeed, such a role would interfere with the need of the EPA or a new department to develop and maintain a strongly cooperative relationship with other agencies and departments. A relationship predicated on NEPA oversight and implementation could instead lead to confrontation and what could inevitably be viewed as interference.

The reaction of many to the proposed abolition of CEQ has been characterized, I am afraid, by a certain amount of indifference. This attitude, I feel certain, derives from the fact that over recent years CEQ has not always been a significant factor in environmental affairs and frequently has had a mere modicum of Presidential support. Presumably, this has been a matter of Presidential choice.

However, during most of its first four years of existence, CEQ played the lead role in the development of new environmental policy initiatives including most international environmental matters. While it was my privilege to chair CEQ during that period, I hasten to say that our success was due in overwhelming measure to Presidential support and backing.

When first established, the CEQ prepared and promulgated the guidelines for federal agency compliance with NEPA. At that time, there was some significant resistance among the agencies and, when necessary, the White House weighed in decisively to assist us. The President submitted annual messages on the environment to the Congress from 1970 through 1973. CEQ had the lead in preparing these messages as well as the legislative and executive initiatives that were involved. In carrying out these responsibilities, CEQ convened and chaired working groups of representatives of all the concerned agencies.

Among CEQ'S initiatives during that period were: Clean Water Act revisions; a Clean Air Act with uniform national standards; toxic substances and noise control; sulfur emissions and lead in gasoline taxes; tax proposals to encourage historic preservation; a World Heritage Convention; a moratorium on the commercial hunting of whales; pesticide legislation overhaul; and endangered species, national land use policy, ocean dumping control, oil spill control, safe drinking water, power plant siting, and surface and underground mining control legislation.

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I seriously believe that the environmental initiatives developed by CEQ and submitted to the Congress by the President during those years represented the greatest outpouring of presidential initiatives in a single policy area in our Nation's history. I believe that references to CEQ's annual reports on environmental quality for these years will bear me out.

It was an extraordinary record and one that only an Executive office agency could achieve. It was also a record that probably was only possible at that particular time in history. The backlog of unmet environmental needs was overwhelming in 1970 and coincided with public demand for action on that agenda. Support in the Congress was bipartisan, and Presidential leadership was strong.

I firmly believe, however, that such a time is again before us. In the opening words of its report, the National Commission on the Environment declared:

We ... are convinced that the natural processes that support life on Earth are increasingly at risk and that by choosing to act or not to act to confront this risk now, our country is choosing between two very different futures. If America continues down its current path, primarily reacting to environmental injuries and trying to repair them, the quality of our environment will continue to deteriorate, and eventually our economy will decline as well. If, however, our country pioneers new technologies, shifts its policies, makes bold economic changes, and embraces a new ethic of environmentally responsible behavior, it is far more likely that the coming years will bring a higher quality of life, a healthier environment, and a more vibrant economy for all Americans. (page xi)

It is indeed time to choose. As I indicated at the start of this letter, the United States needs a whole new framework for environmental policy. This framework must be on prevention rather than remediation after the fact. It must seek to harness market mechanisms to achieve the greatest environmental protection at the least cost, make sustainable development a guiding principle in both public and private decision-making, and recognize that an environmental ethic as a value system for guiding choices is vital in our own society. The new policy framework must be a driving force to integrate all these factors across-the-board into the policies and actions of all federal agencies.

This is an ambitious agenda. It cannot be achieved overnight. As the Commission observed, it will require Presidential leadership of a high order and on a continuing basis. It will require active Congressional participation and oversight, also on a continuing basis. And, it will require participation by the public.

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Creating a Department of the Environment--which I and the Commission strongly support--will also be an important step. (p. 50) (See also the attached letter to Senator Glenn signed by five former EPA Administrators supporting elevation.) The Commission envisioned a new department as representing far more than mere elevation of EPA to departmental status. Among the principal functions of a Department of the Environment, as we envisioned it, "would be the formulation and oversight of the National Environmental Strategy." (p. 50) In this connection, we recommended (at p. 47) that

Congress and the President should work together to development a National Environmental Strategy. This strategy should be the basis for federal agencies to incorporate environmental considerations into their plans and policies. It should also be the basis for the federal government's work with the private sector to achieve sustainable development.

Only such a comprehensive, national strategy can link environmental considerations to various sectors of the economy and relate explicit environmental programs to programs of diverse federal agencies. The strategy must provide a detailed guide for achieving sustainable development. It should include specific qualitative goals, priorities, and steps that agencies must take to achieve environmental objectives. In the words of our Commission report "such a strategy should be dynamic and responsive, updated perhaps every two years." (page 48) Although the Commission envisioned legislation requiring the new Department of the Environment to develop and implement a national environmental strategy, I am encouraged to hear that the Administration plans to issue an Executive Order requiring such a strategy.

In my view, completing the environmental agenda will require retaining a statutory environmental presence in the Executive Office of the President. This could well be an Office of Environmental Policy as proposed by the President, rather than the existing Office of Environmental Quality, but it must be established on a statutory basis.

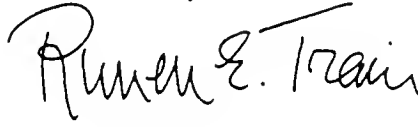
My own experience is that both line agencies and the White House tend to concentrate on crisis management rather than on long-term policy formulation. Likewise, the White House inevitably is the target of a great deal of political pressure.

For all these reasons, I believe strongly that a statutory office in the Executive Office of the President, adequately staffed, and acting in close coordination with a new Department of the Environment, is the best vehicle for overseeing the implementation of NEPA and for promoting sound environmental policies for the future.

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Mr. Chairman, I very much appreciate your considering these views. I would ask that this letter be included in the formal record of your Committee's April 1, 1993 hearing.

Sincerely,

A handwritten signature in black ink, reading "Russell E. Train". The signature is written in a cursive style with a large initial "R" and a long horizontal stroke extending from the "n".

Russell E. Train

Enclosures

CC: The Honorable John Chafee

Senator BAUCUS. Thank you. Administrator Browner, why don't you approach the witness table. I'm very honored to have you back here again and we do understand the time constraint that you're under.

Ms. Browner, could you tell us with some precision as to when you think you do have to leave?

**STATEMENT OF HON. CAROL M. BROWNER, ADMINISTRATOR,
ENVIRONMENTAL PROTECTION AGENCY**

Ms. BROWNER. Well, Mr. Chairman, this matter that the committee is looking at is a very serious matter and one that I think deserves close scrutiny and analysis, so I would like to stay as long as possible to answer the questions and to discuss this with the members of the committee. I think we are making some efforts to deal with my commitment, to testify before another committee, and see if we can juggle that to and allow for some extra time here.

My statement is very brief, because I did want to allow for questions.

Senator BAUCUS. I appreciate that. I think that's a wise decision because there are a good number of questions that I have and that members of the committee have, and I appreciate that very much. Why don't you proceed?

Ms. BROWNER. Again, in the words of many of the members of the committee this morning, this is a serious issue. I am glad to see this committee take up a hearing of this nature, to allow for discussion of this proposal.

I want to thank you, Mr. Chairman and Senator Chafee, for moving so expeditiously to schedule this hearing and to bring these witnesses here today to discuss this matter. I appreciate the opportunity to present the administration's views on transferring to the proposed Department of the Environment most of the functions that have historically been performed by the Council on Environmental Quality.

I want to assure each and every one of you that this Administration is pledged to strengthening the Nation's commitment to environmental protection, while also streamlining the process, in light of today's needs and priorities.

The Environmental Policy Act was passed in 1969 and signed into law January 1, 1970. NEPA was, and remains, a commitment that the Government of the United States will include the environment as fundamental criterion in its decision making process in the same way that we consider national security and the economy.

As you all did, NEPA also created CEQ; a three-member Presidential council that was directed to "analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in light of the policies set forth in NEPA; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment." That's a fairly remarkable charge. It's one that we all still share and we need to remember that it was signed in 1970, the year of the first Earth Day.

Since 1970, much has occurred. The Council and its supporting Office of Environmental Quality has ably overseen the Government's implementation of NEPA. The Congress has passed far reaching environmental legislation—the Clean Air Act, the Clean Water Act, RCRA, et cetera. The Environmental Protection Agency was formed and all the Federal departments and agencies have moved toward integrating environmental considerations into their day to day activities and their decision making processes. NEPA has served as a broad philosophical base for this activity. There is much to be proud of in the work of CEQ and their implementation of NEPA.

This Administration seeks the creation of the Department of the Environment—an equal member of the President's Cabinet—as it makes national decisions affecting such cross-cutting matters as the economy, energy, transportation, agriculture, and defense. The philosophical foundation embodied in NEPA supports the principles that will guide a new Environment Department. “Productive harmony” between humans and nature, “interrelations of all components of the natural environment,” “ecological systems,” the link between environmental quality and human welfare and development, and concern for “present and future generations” are not rhetoric, but a framework for policy and decisions.

The new Department of the Environment will be committed to moving beyond command and control, media-specific regulations, to alternative approaches oriented toward pollution prevention, ecosystem protection, and incentive-based policies. With this commitment, and as a permanent and equal partner in the President's Cabinet, this department will be well positioned to provide the leadership and support necessary as NEPA moves into its third decade. A Department of the Environment will have the scientific and technical expertise, resources, and accountability appropriate to ensure the vigorous implementation of NEPA that the Nation deserves. And, it will be placed to meet the directives your predecessors, Senators Jackson and Muskie, gave to the Council in their 1970 charge.

This Administration is committed to providing a healthy economy that meets our needs today, while preserving the environment for our children and future generations to enjoy. This was the promise of NEPA—and it is the promise of the new Department of the Environment. Bringing this function into the new department is a statement of the administration's commitment to this goal, and our belief that this new institutional framework can only serve to strengthen implementation of this landmark environmental law.

Thank you very much.

Senator BAUCUS. Thank you very much, Ms. Browner.

I guess the basic question that's on the mind of most people is how the environment will be protected with this change. Here is the CEQ, which essentially is being abolished, for all intents and purposes, and most of its functions transferred to your agency-about-to-be-department, and the dispute settlement mechanism also is somewhat in doubt—in the hands of the President ultimately—but nevertheless, CEQ, as an arbiter among agency disputes, will no longer be there. Maybe a function will be created by executive order—maybe by statute, but probably by executive order.

What do you say to those who have very legitimate concerns that the environment will no longer be as protected as it otherwise might be?

Ms. BROWNER. First, I would say that the environment absolutely will be protected. In a way, that is in keeping with the desires of all citizens of this country.

I think that as we elevate EPA to department status, we bring with that status an ability for the new Department of the Environment to work with other Cabinet agencies to set a new course for environmental protection. We look forward to the opportunity to cooperate with our colleagues in the Cabinet in such efforts as pollution prevention. Wouldn't it be exciting if a day finally came when we no longer had disputes between agencies because we could work cooperatively across agency boundaries to make sure that all actions taken were, in fact, environmentally sensitive, and that it was a natural occurrence for agencies to consider the environmental consequences before they took action?

That would be our goal—to work with our colleagues in the Cabinet to bring this sort of thinking, this sort of foresight, to their actions, and to move us into a new generation of relationships on environmental matters.

Senator BAUCUS. Someone once said to me that often when former Administrators would present their case to the Cabinet or to decision makers in the White House in the past, the CEQ was often an additional advocate—helped the cause. With this agency no longer there, that would no longer be the case, so you'll be there alone, not joining forces with someone else.

Ms. BROWNER. Well, I don't think we feel that we will be alone. I think that there is growing recognition among all Federal agencies of the significance of environmental considerations. We've had 20 years of experience, and I think the CEQ deserves an awful lot of credit for changing how Federal agencies think about environmental protection. If we go back and look at some of the very first Federal activities that were reviewed the NEPA process, by CEQ, 20 years ago, compared to the sort of activities we see today—there has been a drastic change in even the proposed activities. The type of activities that were proposed 20 years ago would be laughable today and that is, in large part, because of the role of CEQ. We're at a different point in the history of environmental regulation and environmental protection. That's why I think it's important that we have an agency with an equal member of the Cabinet who can bring these discussions to a new level, and to talk about the future of environmental protection.

Senator BAUCUS. So, your point is that as Cabinet Secretary, you'll have a lot more clout?

Ms. BROWNER. Absolutely.

Senator BAUCUS. What about EPA's NEPA compliance? What will you, as the new Secretary of the Environment, do to improve NEPA compliance?

Ms. BROWNER. Mr. Chairman, I am aware of the questions and the concerns that have been raised about EPA and its past compliance with NEPA. We are commencing a review of how we could improve on NEPA compliance in terms of the alternative analysis, the impact statements, public participation—the agency does have

instances where, on a voluntary basis, we comply with the environmental impact statement provisions of NEPA. We have others where we actually comply with NEPA.

Senator BAUCUS. You're going to improve work, too.

Ms. BROWNER. We're going to look at where we can do a better job. We recognize the complaint.

Senator BAUCUS. Finally, let me just address—ultimately, in the final analysis, what really counts? Is it the President's, or a Governor's inclination toward environmental protection which is much more determinative, in fact, to protect it? Or is it, in your experience, that the agency below determines ultimately whether the Executive Branch will protect the environment?

Ms. BROWNER. I think it's a combination. Obviously, there can be nothing better than the leadership of the President or a Governor on these matters. The agency who has the primary responsibility can help to take that leadership and implement it on a day to day basis. But, you're exactly right—it's important to have the leadership at the top.

Senator BAUCUS. I think that's an important point to make.

You know, CEQ did not prevent President Bush from making, if not disastrous, certainly a very poor showing of the United States at the Rio de Janeiro summit. That was, I think, failure of Presidential leadership and it was also a failure of Presidential leadership in the Reagan era, insofar as that Administration paid no attention to environmental protection. In fact, it went in the opposite direction and CEQ did not prevent that Administration from protecting the environment. So I think, ultimately, it's far more important to have a President and Vice President who is committed to environmental protection, albeit CEQ and other agencies do help. Certainly the new Department of the Environment will be a big asset but, ultimately, it's the person at the top who calls the shots.

Thank you very much.

Ms. BROWNER. Thank you.

Senator BAUCUS. I'd like to defer now to a ranking member of the committee.

Senator CHAFEE. Thank you. Mr. Chairman, I wouldn't want the projection that under the Reagan Administration no environmental protection took place. I can remember that we passed the Endangered Species Act and we passed the Superfund.

Senator BAUCUS. All by initiative of the Congress, too, I might add.

[Laughter.]

Senator CHAFEE. Well, I don't know. We'd have to debate that.

Ms. Browner, I must say, I hadn't seen the witness list and then I heard Senator Durenberger's opening statement and looked at the list. I'm stunned at the absence of environmental organizations; obviously, this is the big issue for them. Did you or the administration strong arm those outfits and tell them not to come?

Ms. BROWNER. Senator Chafee, I had no discussions with the environmental groups. In fact, until I got here this morning, I thought there was a panel of environmental groups on the agenda for today. I have not talked to other than one group who had indicated support for the legislation as it currently exists, with the

CEQ language. I had not talked to any of the environmental groups about this.

Senator CHAFEE. Well, I'm informed that they were specifically invited and they refused to come, and I'm stunned at that.

Senator BAUCUS. That's correct. They were invited.

Senator CHAFEE. I think that's a very poor show.

Senator BAUCUS. I might say, they were all invited and did not come, with the exception of Jay Hair of the National Wildlife Federation, who wrote a letter in support of this action. That is the only organization that has responded.

Ms. BROWNER. That's the only organization that I talked to about this matter in any specific detail.

Senator CHAFEE. Well, I'm distressed that they didn't show, and I find it hard to believe that every one of them had a prior conflict and couldn't appear.

Now, about EPA taking over these duties. You have certain jurisdiction that you focus on—clean water, clean air, and so forth. What happens when you get an environmental impact statement that impacts on marine mammals or endangered species? Where are you then?

Ms. BROWNER. We would call, as we do now, on the expertise of other agencies. The process, as I understand it now, allows for a variety of agencies with direct responsibility for the resources that you mentioned to participate. That would certainly be our intention. We don't see this as something that we would do to the exclusion of other agencies who have far greater knowledge in particular areas.

Senator CHAFEE. One of the complaints that EPA frequently has is that new duties are levied on you without the resources to perform them. That's not just a song that you sing, that's a song that your predecessors have sung. Now, we're levying upon you all the duties that come in connection with the evaluation of the EISs and, indeed, acting as a judge—I presume you would be the judge in these instances where there is conflict between various departments. What about your manpower for that?

Ms. BROWNER. Well, let me explain what we do currently, because I think it helps to answer the question. We presently review almost 450 EISs annually, and another 2000 actions—regulatory, legislative proposals, et cetera, pursuant to section 309 of the Clean Air Act. We believe that by pulling on resources throughout the agency and looking at the resources that we have currently to do our reviews that we can meet this responsibility without additional resources.

Senator CHAFEE. Let me ask you a question. As I said in my opening statement, I think that in the White House there should be some entity—what you'd call it, I don't know—but let's have a supposing. Suppose we have a new sagebrush rebellion and we have a new President, James Watt.

[Laughter.]

And who, by reputation, is not overly tilted toward the environment.

[Laughter.]

Now, where are we then? We have no CEQ, we have no Office of Environmental Policy—at least so far proposed. What is your suggestion?

Ms. BROWNER. If this legislation were to pass, we would have a Department of the Environment, who would be guaranteed a seat in the President's Cabinet, and a voice. While that President might not appoint the most environmentally sensitive or inclined individual in that position, there's no reason to think that they would in the CEQ position.

I think the fact that you have a department representing the environment, responsible for working with other Cabinet agencies and their actions to protect the environment is very significant. It does make a difference to be a full-fledged member of the Cabinet. This President and prior Presidents have been very generous in inviting EPA to the table and giving EPA a voice. But, I think all of us who have served in this position and have been invited to the table agree that there is a difference between being invited to the table and having an absolute right to sit at the table.

Senator CHAFEE. I see that my time is up.

I don't share your optimism. I think that, first of all, Presidents use Cabinets in different ways. I mean, it's getting to be so that you have to hire a hall to have a Cabinet meeting now. There are quite a few and so, therefore, you have compartmentalized—you're dealing with a defense problem or you're dealing with a trade problem, or whatever it is—and yet, having a office right there.

My time is up.

Senator BAUCUS. Thank you, Senator.

Senator Boxer?

Senator BOXER. Yes, I agree with some of those statements by the ranking member.

I want to put into the record, if it's okay, a letter to President Clinton dated March 3, from a number of environmental organizations, and a number of other letters from other environmental organizations that underscore their point. If I might do that?

Senator BAUCUS. Without objection, the letters will appear in the record. (See p. 63.)

Senator BOXER. I think that the voice of the environmental groups ought to be heard at this hearing. I'm disappointed that they're not here, but they certainly have contacted me and I have their letters here. I guess I want to get to the point of their suggestion, which I think is very reasonable. I'd like your comments on it. They say,

We believe the most straightforward way to accomplish this proposal would be to submit legislation to Congress that would amend NEPA and the Environmental Quality Improvement Act by transferring the basic functions of the existing Council on Environmental Quality to the new Office of Environmental Policy.

So, I ask you, what would be wrong with making this change by statute?

Ms. BROWNER. I think that the White House believes very strongly that they should have the ability to select the head of an Office of Environmental Policy in the same way that they do the Domestic Policy Council, the National Economic Council—that is an individual that is not subject to Senate confirmation. I think that the issues that are raised in NEPA evaluations are something that

does demand an individual who is subject to Senate confirmation. That's why it is the proposal to make sure that those responsibilities be housed underneath individuals who are, in fact, confirmed by this committee and by this body. It is not the White House preference as it relates to the Office of Environmental Policy.

Senator BOXER. Why?

Ms. BROWNER. Well, the President believes that he should be able to choose—in the same way that he does on the Domestic Policy Council and on the National Economic Council, which this President created—those individuals and that they should serve at his pleasure.

Senator BOXER. Right, but I don't believe that the President has been thwarted in choices, such as your wonderful nomination. I think he saw a tremendous bipartisan support. I find that a troubling reason because I think that it makes the assumption that the United States Senate is going to try to thwart the President, and I don't see that has happened in any of the appointments thus far.

Who would perform the NEPA functions? How would that be accomplished?

Ms. BROWNER. The actual responsibilities would be housed in the new Department of the Environment. If there were to be a referral, a dispute, that could not be resolved between two agencies, then the President would retain that authority to resolve that difference, to make that final decision.

Senator BOXER. And how would this be funded?

Ms. BROWNER. The responsibilities would be handled within existing resources at the new Department of Environment.

Senator BOXER. So you're going to absorb, within your budget, this new function?

Ms. BROWNER. Again, Senator, I think it's important to recognize that we already do a lot of this work. We reviewed, just last year for example, 450 EISs, so there's a big piece of this that we have worked very closely with CEQ on. They have delegated the operational responsibilities to EPA and we believe that the additional responsibilities—which are not insignificant—can be shouldered through some changes and some reallocations, and that we can meet the demand.

Senator BOXER. So, you're going to be able to perform this function without any additional money by reprioritizing—you'll take it away from something else and put it toward that? Is that what you're saying?

Ms. BROWNER. By looking at the people who currently perform similar functions within our Office of Federal Activities, and rethinking how they do their job.

Senator BOXER. As I understand it, the administration's objection to having this new way of treating the CEQ's former responsibility is not to do this by statute, because they want to avoid Senate confirmation?

Ms. BROWNER. Obviously, the transfer of responsibility—the NEPA function, which this Administration believes to be very, very important—would, by statute, be moved to the new Department of the Environment, so there is not an effort to remove that.

I think it's important to think about where we are after 20 years—I think we all recognize that in environmental protection

we've made tremendous strides and that this is an effort to streamline the process, to create a Department of the Environment who can bring these issues to the table with other departments as an equal.

Senator BOXER. Mr. Chairman, can I ask one last question, quickly?

Senator BAUCUS. Go ahead.

Senator BOXER. NEPA does not apply to the EPA and I understand that EPA has historically fought for that exemption. Is there a legitimate concern that this history would make it difficult for EPA to interpret NEPA's legal requirements and formulate NEPA policy for the Cabinet departments that are not exempted from the law?

Ms. BROWNER. If I might speak with some specificity, this Congress has, on occasion, exempted EPA from NEPA by statute. In other instances, the agency has argued in litigation that the agency's actions on behalf of the citizens of this country to protect the environment are functionally equivalent to NEPA. In many other instances, the agency has agreed on a voluntary basis to undertake EISs, which is not something that every agency does—some agencies only do an environmental assessment—we actually go the step forward.

What I have committed to the Chairman and to all members of this committee is that we will immediately look within the agency to make sure that we are doing everything we can to provide all that is provided under NEPA, which is alternatives, analysis, environmental impact assessment, and public participation. I have a very strong commitment to those three and we will immediately begin the process of reviewing the various actions we take to make sure that all of those are incorporated.

Senator BOXER. You would no longer fight for that exemption?

Ms. BROWNER. We would take actions to make sure that we are meeting the NEPA requirements. The exemption, again, was created in some statutes and, in other instances, by court.

Senator BOXER. Thank you, Mr. Chairman.

Senator BAUCUS. Thank you, Senator. Senator Durenberger.

Senator DURENBERGER. Thank you, Mr. Chairman. I apologize for my absence. Like several members of this committee, I am also on other committees.

I thank you for your statement. If I had any implication in my statement that this whole thing was a partisan effort and everybody here was being very partisan, I didn't mean to imply that. I meant to say that in the last twelve years, the attitude on that side of the aisle was that you had the fox in the henhouse and you can't trust them—now the hens are in charge and we're all supposed to roll over and cheer. That's not the way you make public policy—that's not the way you demonstrate a consistency. I happen to think Bill Clinton and Al Gore and Carol Browner and all these people are totally committed, as I am, to the environment—and a lot of other people are, like from North Carolina I'm sure.

[Laughter.]

But that's not the way you run national policy. So, I hope you understand that my remarks are predicated on that.

I want to ask you just one thing, to zero in. And, I want to complement my colleague from California on the preciseness of her questions and for her own bipartisanship in the way she approached it.

I think the area that bothers me the most is going to be on EIS. Maybe you want to tell me right now what EPA does with regard to Environmental Impact Statements—how, specifically, you would propose to change that and how many additional personnel and so forth it's going to take to do it the way it ought to be done?

Ms. BROWNER. Senator Durenberger, we have submitted to the Chairman and, I believe now, all members of the committee, a brief analysis of what we currently do as it relates to our own actions in terms of environmental assessments and environmental impact statements; where we have been statutorily exempted from NEPA, where we have chosen to voluntarily do that, where there have been court decisions recognizing a functional equivalency. So, I can go through that in detail, but we have provided it in writing.

What I might say is that I am absolutely committed to looking at all of our actions to make sure that we are meeting the goals of NEPA—I think those are extremely important goals—that there be a full environmental assessment, that there be an alternatives analysis, and that there be real public participation. Where we find within an individual program that we are not achieving that, then we have an obligation, I believe, to go back and make those corrections so that, in fact, we actually undertake to meet those goals.

Senator DURENBERGER. I accept that and I will read the statements, but I'm going to just read to you from part of the testimony that he may not be able to deliver, from Mike Deland, to make my point:

In practice, EPA's record with NEPA regulations has been lacking. The agency rates individual EISs on the relatively narrow basis of whether they include adequate consideration of clean water issues, clean air issues, and so forth.

That has been the traditional way that EPA has approached this, so if you look in the bowels of EPA for the EIS section, they're looking at it in terms of water, air, and all the rest. CEQ, on the other hand, with its little \$2.3 million investment and its 31 employees, administers the EIS process on the broader basis of what makes sense for the Executive Branch and the Nation as a whole, including environmental, economic, and social issues.

This is not a criticism of EPA. It is simply a matter of the two agencies' very different locations and roles.

I'm implying, from what you said, that you are going to take on this additional role which I had the confidence was being done in this broader sense of environmental, economic, and social issues.

You're going to take that on in EPA as well, or are you going to change it?

Ms. BROWNER. No. We would intend to take it on.

I don't believe that we can achieve the goals that all of us share in terms of environmental protection unless we move to a cross-media approach—to a cross-media analysis.

I really do applaud the work of CEQ in terms of their leadership and what we now recognize at EPA, and what we will absolutely incorporate in a new Department of the Environment, is that philosophical approach—that you can't just look at water and not look at the land and not look at the air—that you have to look across all of the media.

If you look at some of the activities that have been going on in the agency over the last several years, some of the geographic initiatives, they are a recognition of that cross-media approach. I am personally committed to increasing our activities in that way because I think we all know now—and perhaps we didn't recognize this 20 years ago—that to achieve real environmental protection, we're going to have to look more broadly, we're going to have to look at systems.

Senator DURENBERGER. Let me just conclude, because my time has expired.

That still says that the environmental agency is looking at it from an environmental standpoint. It doesn't say that it's looking at it from an economic standpoint, from the social standpoint—all these other issues—which is what we keep trying to get through here in terms of across all of these Cabinet levels and across all of these resources. We believe you need a more independent Senate-confirmed process that can balance these interests.

I just expressed that concern and you needn't respond to it because I do not question your bona fide interests. I also should say, in reflection, I shouldn't have said "hims," because that's a gender preference.

[Laughter.]

Ms. BROWNER. It was not taken so.

Mr. Chairman, if I just might say?

Senator BAUCUS. Certainly.

Ms. BROWNER. Senator, you're exactly right. Perhaps I didn't speak as clearly as I should have but if you look, for example, at the Great Lakes Initiative, which your State and many other States have worked on in a very cooperative manner over a very long period of time—that is the sort of thing that I'm talking about. That does take into account social, economic, and environmental concerns. It was a public process, there were a hundred public meetings—it's those sorts of things that a Department of the Environment must absolutely be committed to, because it is only in that way, when we go to the people who are affected and we look at all of the ways in which they are affected by environmental decisions, that we are going to achieve the goals that we have set for ourselves.

Senator DURENBERGER. Thank you.

Senator BAUCUS. Thank you, Senator. Senator Faircloth.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Senator Durenberger, I also want to complement Senator Boxer on her in-depth study and, certainly, knowledge.

My question is, what does the White House tell you of the long term plans regarding this proposed Office of Environmental Policy? They're talking about 10 people—but are we going to be watching the vine grow? How long will 10 be 10?

Ms. BROWNER. The White House and this President is committed, and has publicly committed, to reducing the number of people who serve in the White House and so all of the various components of the White House are under, I think, some fairly strict guidelines in terms of their staffing, both in the short term and the future.

In terms of the absolute number of people who will be employed directly in, and serve directly in, the Office of Environmental

Policy, I apologize for not knowing that answer. I'm sure we can get you that answer.

But, I also think it's important to recognize that when you have an Office of Environmental Policy that they will be working across the various policy councils on these issues, so resources can be brought to bear on an interim basis from a variety of the councils in the same way that sometimes DOEP's staff may be available to the NSC, NEC, and the DPC.

Senator FAIRCLOTH. Ms. Browner, in listening to Senator Boxer and Senator Chafee and a number of people here, there seems to be a feeling that what we're doing, and what the President would like to do, would be to avoid the Senate confirmation on the Council as it exists today, and that we're moving toward more concentration of power and expedience by making the EPA a member of the Cabinet and appointing the new environmental council.

I know that this Administration is deeply committed by Vice President Gore and, certainly, the President himself and you, as the EPA Administrator, to protecting the environment. But, we're talking about bypassing the Constitutional process, if I understand what we're doing here today correctly.

With the bypassing of the Senatorial confirmation process, then what do you have? You're concentrating the power with a shotgun affect.

Ms. BROWNER. The relationship between the agencies that are members of the Cabinet—the Department of Defense, the Department of State, the Department of Environment, the Department of Energy—to their corresponding policy councils within the White House is something that has been in place for quite some time. Different Presidents have adjusted those policy councils to meet the needs of the times; for example, President Clinton has created a National Economic Council. He takes very seriously the economic issues facing this country and therefore he brought that structure to bear.

The White House is not seeking to avoid Senate confirmation. They are seeking to, one, elevate an agency to department status to ensure equal participation in the future and, second, to make sure that they have the flexibility in structuring the White House to bring people in who will serve at the President's pleasure in doing these jobs, in the same way as the Domestic Policy Council and the NEC.

It's putting environment—and I think there's a lot to be said about this—on an equal footing with NSC, NEC, DPC, and that is a very positive thing for the environment.

Senator FAIRCLOTH. There seems to be a movement to make the EPA part of the Cabinet. If Congress does so, I wonder if it makes common sense to replace the current Council with a White House Office of Environmental Policy? Shouldn't a Cabinet-level department have final authority in this area without consulting a staff-level environmental policy group within the White House?

Ms. BROWNER. Well, for those matters that are under the statutory responsibility of, presently, EPA—or a new Department of the Environment—obviously that is our statutory responsibility and we are the final decision makers. That is something that is vested di-

rectly in the Administrator or the Secretary, as it is in all of the other agencies.

The point of councils within the White House is to facilitate work between individual agencies and the White House, and across agencies. They bring a variety of agencies and departments to the table to try to work on a joint matter together. Environmental protection in our Government is a responsibility, directly, of several agencies and, indirectly, of all agencies. The Office Environmental Policy plays a very strong leadership role in making sure that we are all working together, that we are recognizing each other's areas of expertise and bringing those to bear so that we do not duplicate the efforts of each other.

Senator FAIRCLOTH. I know the White House has final say, but what concerns me is that streamlining the bureaucracy should not mean moving all oversight functions to unconfirmed White House staffers. This bothers me.

Ms. BROWNER. Well, the responsibility under NEPA would rest with a Senate-confirmed individual, the head of the Department of Environment.

The President, where there was an issue that could not be resolved between two agencies, would be the final arbiter in terms of saying how to proceed or not proceed. I think it's extremely important that the President play that role. After all, he serves at the pleasure of the American public and he recognizes their interests, so placing in him that responsibility, I think, is absolutely appropriate when you have two Federal agencies who cannot, in the end, resolve their differences.

Senator FAIRCLOTH. Ms. Browner, thank you, I understand elections.

Senator BAUCUS. Thank you very much, Senator.

I think it's important to point out that there is no avoidance of Senate confirmation here, whatsoever, because NEPA functions will be handled by the EPA. The Administrator is subject to Senate confirmation, the Assistant Secretaries are subject to Senate confirmation, so all the NEPA functions will be subject to personnel who are subject to Senate confirmations, so there is no avoidance there.

The next question is, what about interagency disputes? That's not changed either—the CEQ did not resolve interagency disputes—it was kind of an arbiter, but it did not resolve them. That was still a Presidential decision, so interagency disputes, under the new proposal will also be resolved by the President. So, in effect, nothing has really changed here.

Thank you very much.

Senator CHAFEE. Could I, Mr. Chairman, ask a couple more questions?

Senator BAUCUS. Certainly.

Senator CHAFEE. Ms. Browner, what bothers me is—and perhaps we're plowing old ground here—is the fact that, under the proposal as it's outlined, there is no remaining office, in the White House, of environment, whether you call it environmental policy, committee, or whatever you call it.

You have given the illustration of the DPC and the NSC and the new NEC. Each of those, in thinking about them, the DPC has a statutory base and so does the NSC have a statutory base. Now, the

new NEC does not; however, there is a Council of Economic Advisors, which is statutory.

What I would like to see is something in the White House—whatever you want to call it. Again, I think you've got a good point that the administrator does this, but the head of that new entity should not be confirmed by the Senate, just like the head of the NSC is not confirmed by the Senate, but there ought to be something there in the White House to have the prominence of the environment present. I don't think it's adequate to have it in the form of a Cabinet officer—Secretary Browner, from EPA who is over in EPA headquarters.

You're not in the White House, as these others are. Now, what's the answer to my worry?

Ms. BROWNER. I really respect the concern you raise. I think it is a valid concern.

This President, this Vice President, and this Administration, I think, has indicated a very strong commitment to the environment by the creation of such an office with equal footing with the NEC, the DPC—that is not something that any other President chose to do, historically. You're right, there was the CEQ, but I think most people who have studied and worked in the White House agree that the DPC and the NSC are unique in their functions and in their proximity to the President. They are unique in their ability to bring a variety of agencies to the table, and this President has said that not only are those two important, but that he's going to add two more—the economy and the environment.

Senator CHAFEE. Okay, but that's just the President saying that and—bingo—you get a new President and the office is gone.

Senator BAUCUS. We're going to have a new President for about 7 years, anyway, so don't worry about that.

[Laughter.]

Senator CHAFEE. From looking at the past track records, there are some Presidents that only have four-year terms.

[Laughter.]

Senator CHAFEE. I appreciate your views. Your answer, as I understand it is, there's one there now—the Office of Environmental Policy—but, it can be abolished anytime the President wishes.

Ms. BROWNER. It has no statutory authority, that is correct.

Senator CHAFEE. He didn't even establish it by Executive Order, did he?

Ms. BROWNER. It has not yet been established by Executive Order.

Senator CHAFEE. Do you think it's his intention to have it by Executive Order?

Ms. BROWNER. I think it is something that the White House would be willing to consider.

Senator CHAFEE. I think there ought to be something there, that is at the table, present, on the environment. And, if he wants to abolish it, then it would be a significant step. I'd prefer it be statutory, but if it isn't, then at least by Executive Order, so if a new President comes in and abolishes it, then it's a definite act and sends signals.

Ms. BROWNER. I appreciate that.

Senator CHAFEE. Also, I don't understand how this system is going to work. If you don't have the office, you say the President is the final arbiter—Presidents can't spend their time deciding an EIS dispute between two departments. That's what Mike Deland and his predecessors did. You say they didn't have the final authority—well, I can't believe a President spent much time worrying about an EIS somewhere.

Ms. BROWNER. If I understand correctly, the number of EISs that were actually elevated to referral level, a level short of going to the President, has not been that numerous.

In the instance where it cannot ultimately be resolved it would be, I think, an unreasonable burden on the President to focus his attention on it.

If I understand the numbers correctly, 25 have actually been referred.

Senator CHAFEE. But I'll bet that Mr. Deland would testify that they massaged those—and he was an arbitrator—to try to resolve these before they even had to come to a hard rock decision.

Ms. BROWNER. Oh, I think that's right, yes.

Senator BAUCUS. Thank you very much. Senator Boxer.

Senator BOXER. Mr. Chairman, thank you so much.

I just want to say, first of all, thank you so much for staying with us because this is something that is touching a vital cord. I think this can be resolved because I think all of us here who have spoken out on this—maybe not all, but 99 percent—are after the same thing, which is a more strengthened environmental presence than we've had before.

I think there's a way to get at this, because I remember so well your confirmation hearing where you pointed out that you have a lot you need to do, which is to seek and use the word "balance." You said, "I've got to balance the environment with economic growth because that's my job." Well, we need someone in there who maybe isn't even thinking about that word, okay? But someone who is going to be an advocate for the environment—and just that. I think we need that kind of voice and I think that the President and the Vice President want to have that kind of voice in the White House—I have every reason to believe it.

But, as I said to the Chairman, we've got to think about legislating for forever, not just because we have a wonderful set of circumstances here where the Vice President of the United States was the leading environmentalist in the United States Senate. It's incredible to have him there, and the President ran on a pro-environment platform but still, things change, and life is very short and it goes very fast. I remember when I came here 11 years ago—it was like yesterday. Of course, when I look at the old pictures, a lot has changed. But, the bottom line is it goes fast and pretty soon you don't know who's next there.

So, all I want to say, Mr. Chairman, to you, is maybe there is a way that we can take this legislation, because I want to elevate the EPA to Cabinet status. I have no problem with this transfer, by the way. I like it, but what I don't like is the fact that it could come under another Administration and it could be abolished, it could be unimportant. There's no statute—maybe there's a way to get a statute and not have the person have to go through confirmation.

I think there may be some ways that we could work together, so if I could just leave the door open, I'm very interested in working with whomever—the White House, with my Chairman—if there is any room. Maybe there's no room—maybe this is a drop dead issue, but I would hope that there is a little bit of room here so that some of the concerns that have been expressed from a pro-environment standpoint here today can be laid to rest. I'm willing to do whatever I can and play a small role with my Chairman if there's any way—whether it's Executive Order, whether statute, confirmation, not confirmation—something to give me a feeling that if things were to change suddenly and a new Administration came, we wouldn't have to be here bringing back the CEQ, and having a hard time getting the votes to do it.

Ms. BROWNER. I would say to all the members of this committee and the Chairman that I hear the concerns you raise. I appreciate this hearing and the opportunity to discuss these concerns. This is an Administration that is absolutely committed to working with the Congress on these sorts of issues, and also to protecting the environment.

We bring forward this proposal as what we believe will be a way to ensure environmental protection, not just in this Administration, but for the future, by giving environment a permanent seat at the table, an equal voice with all of the other Cabinet agencies. We think this is a significant step forward for the environment and we appreciate the opportunity to be here today.

Senator BAUCUS. Thank you, Ms. Browner. I think I can speak for the committee in saying not only do we hear you saying that you fully intend to take our concerns to heart very deeply, but you actually will.

We will be seeing you many times over the next several months and years, we hope.

Ms. BROWNER. Absolutely. I'll come back next week—you all won't be here, of course.

[Laughter.]

Senator BAUCUS. I hope you take advantage of the opportunity to resolve some of these problems during this next few weeks.

Ms. BROWNER. You'll have a much nicer time.

[Laughter.]

Senator BAUCUS. Thank you for taking the time. We very much appreciate it.

Ms. BROWNER. Yes, thank you.

Senator BAUCUS. Now we'll turn to the panel which will include Dr. Michael Deland, former Chairman of the Council on Environmental Quality; Dr. Lynton Caldwell, Professor of Public Environmental Affairs, School of Public Environmental Affairs, Indiana University; Mr. James Moorman, former Assistant Attorney General, Lands and Natural Resources Division of the Department of Justice; and Mr. Phil Hocker, who is President of the Minerals Policy Center.

Gentlemen, I appreciate your patience and further appreciate your taking the time to give your views to this committee. We will have a vote at about 12:00, and there are other constraints that other members of this committee have, so I encourage you to submit your full statements for the record. I further encourage you

to speak briefly—I'll hold you to five minutes. I'll inform you and also members of this committee, including myself, that I am not going to very strictly enforce the five minute rule.

Why don't you begin first, Mr. Deland?

**STATEMENT OF MICHAEL R. DELAND, FORMER CHAIRMAN,
COUNCIL ON ENVIRONMENTAL QUALITY**

MR. DELAND. Thank you, Mr. Chairman and members of the committee. Good morning. I'm Michael Deland and from 1989 to 1993 was Chairman of the President's Council on Environmental Quality (CEQ), and prior to that was the Regional Administrator of the New England Region of the Environmental Protection Agency, from 1983 to 1989.

I appreciate the invitation to testify on the President's proposal to abolish the Council on Environmental Quality and transfer most of its functions to the proposed Department of Environment.

I join all Americans in wishing our new President and Vice President well, and applaud their effort to reorganize and streamline the Government. I endorse the reduction in the White House staff as an important symbolic step in that effort.

I also strongly support elevating EPA to Cabinet rank. Indeed, I was an early and active proponent of a "clean" elevation bill during the last Administration. However, I strongly oppose the recommendation that the Congress should abolish CEQ and transfer its functions to the new Department of the Environment. Good intentions should not obscure what the President is asking you to approve—a permanent, statutory reduction in the advocacy of environmental interests within the Executive Office of the President. If this legislation is adopted in its present form, our environment will be the loser—a big loser. An effort to reshape Government to meet the needs and priorities of a new President is appropriate. However, there are ways to do so without tossing aside more than two decades of institutional precedence and procedures which protect our environment. Indeed, I would urge you to work with the administration to build on CEQ's role rather than reduce it.

There are several reasons why this action, I suggest, is unnecessary and unwise.

First, the proposal to abolish CEQ requires that the Congress amend the National Environmental Policy Act. That statute is America's environmental Magna Carta, and it serves as a model for nations world wide. Amending NEPA is akin to amending the Constitution—it should not be done for trivial reasons.

As you know, the Congress established CEQ as an institution responsible for implementing NEPA policies and procedures. Among its most important duties, CEQ is charged with developing and coordinating environmental policies on behalf of the President and overseeing the environmental impact assessment process. In establishing CEQ, the Congress saw the need for a permanent—and I certainly empathize with Senator Boxer's comments—a permanent body which, by virtue of its position in the White House, would have the vision and authority to draw national environmental policies out of the muddle of parochial bureaucratic programs. By requiring Senate confirmation of Presidential appointees, these legis-

lators ensured that figures of recognized environmental experience and integrity would be chosen to guide this process. It was a good idea then, and nothing has changed to suggest that it's a bad idea now.

Elevating EPA to Cabinet status will not relieve the need for a Senate-confirmed CEQ. The role of an "honest broker" that mediates between departments is not a function that can be transferred to EPA. One Cabinet department simply cannot impose its views on another.

Nor should the Department of the Environment be in charge of resolving problems in the environmental impact assessment process—we've had some discussion on that earlier.

Some others have suggested that because the President and Vice President are committed to environmental protection, it does not matter if the White House environmental office is required by statute or headed by a Senate-confirmed appointee. But future Administrations, as has been said, may not be as sympathetic to the environment.

Senator BAUCUS. I'm going to ask you to summarize your committee testimony, Mr. Deland.

Mr. DELAND. Yes, Mr. Chairman. I'd just like to quote a statement that Senator Durenberger made earlier—"No economist would trade the Council of Economic Advisors for a Deputy Assistant to the President. No environmentalist should be happy with a comparable trade."

Senator BAUCUS. Thank you very much. The next witness is Dr. Lynton Caldwell.

**STATEMENT OF LYNTON K. CALDWELL, ARTHUR F. BENTLEY
PROFESSOR EMERITUS OF POLITICAL SCIENCE, PROFESSOR,
PUBLIC AND ENVIRONMENTAL AFFAIRS, SCHOOL OF PUBLIC
AND ENVIRONMENTAL AFFAIRS, INDIANA UNIVERSITY,
BLOOMINGTON, INDIANA**

Mr. CALDWELL. Mr. Chairman and members of the committee. In 1968, through an arrangement with Russell Train, then President of the Conservation Foundation, and Senator Henry Jackson, Chairman of the Senate Committee on Interior and Insular Affairs, I was made available to the committee in developing legislation for the protection of the environment. During most of 1968 and 1969 I worked with the Interior Committee staff and the Congressional Research Service in extensive interviews with Federal agency personnel and with environmental scientists in shaping the legislation that became the National Environmental Policy Act. My particular contributions to NEPA were the concept of the environmental impact statement and the functions intended for the Council on Environmental Quality.

The CEQ was designed to provide long term statutory, nonpartisan continuity in national environmental policy. Its primary function was to oversee the administration of NEPA. CEQ was placed in the Executive Office of the President because the scope of the Act cuts across all line departments of the Government. The CEQ is not White House staff, no more than is the Council of Economic Advisors. The White House staff, as conceived in 1937, by the Presi-

dent's Committee on Administrative Management, were personal aides to the President with "no power to make decisions or issue orders in their own right". But the statutory advisory and managerial councils and offices located in the Executive Office were placed there because of the service-wide scope of their functions and to help the President fulfill his obligations under Article 2 of the Constitution, to take care that the laws be faithfully executed. The members of these councils were not political aides and many do require Senatorial confirmation.

The membership on the council was set at three to provide a broader, more diverse coverage of environmental issues than should be expected of a single advisor. Most of the proposals for similar environmental councils introduced into the 90th and 91st Congresses called for larger membership.

The Congress, under Title II of NEPA, set high qualifications for the appointment of council members and required their confirmation by the Senate. I quote from the Act, "Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policies set forth under Title I of this Act; be conscious of and responsive to scientific, economic, social, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment." No comparable standards are required for appointment by the President to the White House staff, or a nonstatutory office.

The substantive sections of NEPA and the mandates set forth under Title II require implementation by the President. The courts enforce only the procedural provisions of Section 102-2, notably the environmental impact statement requirement.

The allegation that the CEQ has not achieved a prominence comparable to, say the Council of Economic Advisors, and does not fully exercise its mandate under the law, is not borne out by Congressional oversight studies. Previous Presidential Administrations especially recently, have failed to permit the council to function as fully as intended and they have not, themselves, utilized the powers available under the Act.

The General Accounting Office study of the CEQ in 1981 concluded that, one, there are several factors which would make it difficult for another agency to effectively carry out CEQ's role. Two, that the consensus of opinion was that the CEQ's role is unique and is best filled by the current arrangement. Three, CEQ has been successful in carrying out its responsibilities. We've heard a good deal of testimony to that effect at this hearing this morning.

A President truly committed to maintaining and enforcing the quality of the environment could find in NEPA a powerful tool for Executive action. An independent, nonpartisan council could win public confidence to a degree very unlikely in a White House staff member.

To distribute NEPA responsibilities to the various Cabinet-level departments is almost to ensure that they will never be used or, if used, could become issues of interdepartmental contention.

The Congress created the National Environmental Policy Act and established the CEQ. Extensive studies over a period of two years preceded enactment. Surely the Congress will not accede to the changes now proposed at the White House without careful consideration.

Thank you.

Senator BAUCUS. Thank you very much, Dr. Caldwell.

Next, Mr. Moorman.

STATEMENT OF JAMES MOORMAN, CADWALADER, WICKERSHAM AND TAFT, FORMER ASSISTANT ATTORNEY GENERAL, LANDS AND NATURAL RESOURCES DIVISION, UNITED STATES DEPARTMENT OF JUSTICE

Mr. MOORMAN. Thank you, Senator.

I'll just make one of the points in my testimony.

When CEQ was created in 1970 on a wave of concern about the environment—with the Santa Barbara oil spill providing clear evidence that we needed attention focused on protecting the environment—it was thought that the CEQ would be the coordinating center of national environmental policy making for the coming era. Things haven't worked out that way.

CEQ has done a lot of good things, but something odd has happened in the last two decades. The National Executive, has been a big disappointment in the role of leader in the creation of environmental policy. If I can complement the Congress—when it seems to be getting a lot of negative publicity—Congress has been magnificent in this role in the last two decades. All of our environmental initiatives have come from Congress. You members and your committee staffs have been very persistent and have provided institutional memory—you've done a great deal.

It's been a great struggle to get the Executive, whether under the Republicans or the Democrats, to heave to. CEQ has met with hostility from the Executives—there have been numerous attempts to kill it. Sometimes it's been allowed to do great work and it's done great work but that has been the exception. The Congress was right to establish CEQ in the Executive. It is a demand for leadership. As for leadership, we haven't really gotten it, but Congress should keep the demand alive.

You know, you see these bumper stickers, "Friends don't let friends do so-and-so," well friends of the administration should not let it kill CEQ because a blunder is about to be made at this time in the killing of CEQ. I don't have any doubt about their intentions or anything—I know they mean well—but it's a mistake. Don't let them do it, Senators. You should give them a signal that you want strong environmental policy making leadership from the Executive Branch. The best way to do that is to tell them, "Here's CEQ—strengthen it, make it stronger." Tell them this is what you want.

That's my point.

Senator BAUCUS. Thank you.

Next, Mr. Hocker.

**STATEMENT OF PHILIP M. HOCKER, PRESIDENT, MINERAL
POLICY CENTER**

Senator BAUCUS. Next, Mr. Hocker.

Mr. HOCKER. Senator, I appreciate the chance to be here and I appreciate your holding this hearing.

My written statement has been submitted and I will just touch on a couple of additional points that the discussion brought up.

First, I would like to mention that I've been requested to submit, and I believe your staff has, an additional statement by the Idaho Conservation League. They had requested the opportunity to testify today and were not able to be.

Senator BAUCUS. We do have that, thank you.

Mr. HOCKER. I'd like to have that included in the record.

Senator BAUCUS. Without objection, the information will appear in the record. (See p. 70.)

Mr. HOCKER. I think that that's symbolic, in a sense, because there are hundreds of citizens' groups and individuals around the country who have depended upon CEQ for the last 20 years as, frankly, a court of last resort which they could reasonably reach in NEPA disputes and NEPA concerns, both through the mechanism of the NEPA regulations which CEQ administers and promulgates, and also through the CEQ referral process—even on those, as was pointed out earlier, relatively few occasions when it has actually been called upon—but, as always, it's the baseball bat that's behind the door. It is there, it has been called upon, it has been invoked more often, of course, than it has actually been used.

There are many, many people around the country who depend upon the NEPA process to get fair and open public consideration of the environmental impact of Federal decisions, for whom CEQ—through regulations or the possibility of referral—is the only real available court. To say that those disputes, if there are any, will be resolved by the President, frankly is not a real alternative. That's not going to happen enough times to be a significant source.

To say, as Administrator Browner said earlier, that in the New Millennium—not that she used that expression—but that in the New Millennium there will be no interagency disputes over environmental affairs is not, I think, realistic. We have all dealt with these agencies. They all have different mandates established by Congress or evolved over time. They will have disputes among themselves, and between themselves and NEPA. There needs to be a forum, outside of one other Cabinet agency, to whom those disputes can be brought.

EPA, of course, as has been pointed out, does comment on EISs today and on other environmental review. Those comments have not been terribly effective in many occasions, in bringing the agencies to improve performance. So, I think that it's critically important to many, many people who are not able to be here today, that this forum be preserved.

Next, I'd like to echo something that Mr. Moorman said a minute ago—that the discussion today has tended to be a defensive one—referring to the roles that CEQ could maintain in the face of hostile or ambiguous Administration policy. But I think there's a much more positive opportunity there, one which hasn't been fully

exercised over the last twelve years, but an important one which the framers of the Act really had in mind when it was put forth.

If you re-read the law, CEQ wasn't really conceived as a sort of defensive fort for environmental concerns in a hostile Executive—that wasn't really the perception. I think in 1970 no one anticipated such an Executive. That it has filled that unanticipated role is a credit to the overall strength that the statute gave the body. But, there's an affirmative role, aggressive role, that CEQ can and should be called upon to fill.

Finally, one last reflection. We talked about what would happen if a hostile Administration took over, and how they would act toward the Office of Environmental Policy. Would they abolish it? What kind of political fallout would there be if they were to abolish it? Well, of course they wouldn't abolish it—they would simply propose to transfer its function. And, they would propose that its functions not be neglected, but that they be taken up by a departmental agency. They would assure us all that those functions would be fully carried out and executed by that departmental agency.

I don't for a moment suggest that that's the motive of this Administration—I do not believe that. I believe the motives here are of the very highest. But, I think that would be an easy thing to do, it would be an easy thing to camouflage, and it would be a difficult thing to refute if it came about. I think it's a concern that should be addressed and prevented by not abolishing CEQ and by retaining it.

Thank you for your attention.

Senator BAUCUS. Thank you very much, Mr. Hocker.

Senator BAUCUS. I'd like to ask all of you whether you support the elevation of EPA to department level status and, if you do support it, do you think that will help or not help protect the environment?

Very quick answers, because I have another question. Let's go down the line here—Mr. Deland?

Mr. DELAND. Mr. Chairman, as I stated, I strongly do support the elevation. I don't think it's material as to the role of CEQ.

There are numbers of meetings within the White House that are important that do not involve Cabinet members, and the environment ought to have a voice at that table. I, for example, attended—

Senator BAUCUS.—Forgive me, I do have a lot of questions here. How much do you think elevation to Cabinet Level is going to help the protection of the environment? Will it help to get rid of the status quo? What do you think, bottom line?

Mr. DELAND. I think as Administrator Browner said, it's important to have her not invited, but statutorily, at the table. But, I don't think it will help in the day to day deliberations within the White House.

Senator BAUCUS. Okay, thank you. Mr. Hocker?

Mr. HOCKER. I strongly support it. I believe it will help significantly. But, as Mr. Deland said, I don't believe it closes the question—it doesn't close it, but it helps significantly.

Senator BAUCUS. Dr. Caldwell?

Mr. CALDWELL. I certainly support the elevation of EPA to Cabinet status but, of course, one has to qualify that support because we don't know at this point what authorities might be invested in the agency at the Cabinet level.

I must add I'm also sympathetic with the idea of a position in the White House which could be a liaison with CEQ. But, the two functions are very, very different and I think that ought to be kept in mind.

Senator BAUCUS. Will elevation to Cabinet level status help the environment?

Mr. CALDWELL. In principle, yes.

Senator BAUCUS. Thank you. Mr. Moorman?

Mr. MOORMAN. I very much support the elevation of EPA to Cabinet level. I believe it will help EPA carry out its very specific statutory functions, which are very narrowly focused on things like hazardous waste, clean air, and what have you.

As for general protection of the environment, I don't think it will help in that regard at all because I don't think that's EPA's mission. EPA has never been a generator of new ideas and policies and I don't think it will be in the future.

Senator BAUCUS. Let me shift gears here slightly. This discussion, so far, has been somewhat in the context of disputes, dispute resolution and so forth. I am trying to find more common ground, in many ways, between environmentalists on the one hand and industry and developers on the other. I'm trying to get away from the "religious wars" which I think have occurred in the last 5 to 10 years where, frankly, it's like two ships passing in the night—neither side talks to the other. Often, as a consequence, not much is resolved. I see more room now for commonality and resolution that will enhance and protect the environment.

First, this country is tired of gridlock—they want some resolution, generally—they certainly want the budget deficit reduced. I think that's probably why Bill Clinton was elected President—people are tired of gridlock and they wanted a change. I see it in environment. I know Administrator Browner, when she was head of the corresponding agency in Florida, in the Everglades and certainly with Disney and wetlands, worked to resolve disputes.

This committee has had several hearings to reauthorize major statutes—the Clean Water Act, the Endangered Species Act, for example—hearings to try to find commonality. One subject was environmental technologies. They're trying to encourage our country to push much more toward the development of environmental technologies, not only abatement technologies, but preventive and life cycle technologies for the sake of economic efficiency and also environmental reduction. Our competitor's are a little wiser doing so—certainly many German companies, many Japanese companies—and many American companies. The larger, more progressive American companies are moving in this direction. So, we'll set up a hearing and try to find out how we get better science in the right sense of the term so that there's a better fit between the environmental problems we have in this country and the remedy. Often we pass statutes here that do not focus on the remedy.

In addition, there's much tension between Federal Government and State government, and delegation of environmental statutes.

My time is about up here, but all I'm saying is that I'm a little bit concerned that this entire discussion has been in the context of disputes, rather than looking for resolutions. I think the best goal for potential resolution is sustainable development. That is where we can find some commonality between the environmental movement on the one hand and business and industry on the other. I know it's the intent of the Vice President and, I'm quite certain, of the President and many in the White House to see where we can advance the ball toward sustainable development and find commonality. Sustainable development really means developing incentives so individuals and private concerns take in the whole life cycle concept in the manufacturing process—what actions they take, environmental costs—and internalize the otherwise environmental externalities. Because, in the long run, that's what really counts here. I don't know this, but I do think that is what they're trying to do—it's what I am trying to do.

My time is up and I'm going to turn to Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman.

Mr. Deland, in your testimony, you outline that everything you did wasn't in the front pages of the newspaper, but you were on there plugging. Then you say,

I can state emphatically that CEQ made a positive difference in the protection of our environment because we were there as environmental advocates within the White House complex.

There seems to me—and I think that Mr. Hocker and others have stressed that—the physical presence you pointed out, you weren't across the street in Lafayette Square, you were in the old Executive Office Building. Well, so is Ms. McGinty, in this Office of Environmental Policy. She's there and I guess I'm troubled by what it means “being there.” If nobody invites you to come to the party, what happens then? I assume President Bush would say to you, as you're stewing over what to do in Rio about the biodiversity convention, the President would say, “Come on over, Mike, and let's talk about this”?

Mr. DELAND. That's correct. He did. I, as a Senate-confirmed representative of the environment, was accorded Cabinet status and, hence, not only participated in all of the meetings that it was announced the director of the new office would participate in—that of the National Security Council and others—but attended all Cabinet meetings. I never recall seeing a Deputy Assistant to the President in a Cabinet meeting.

Further, I was given access directly to the President, at my discretion, either personally or in writing, without having to go through the Chief of Staff or anybody else. That was a luxury given only Cabinet officers and myself—and Michael Boskin, also Senate-confirmed, Chairman of the Council of Economic Advisors.

So, I could request of the President a private meeting and it was granted, could give him a memo personally without having it reviewed by anybody else in the White House, and I think that is an important, critical distinction.

Senator CHAFEE. I have trouble getting the importance of this Senate confirmation business. I won't suggest that the Senate is not a very important body, but I'm not sure why Senate confirma-

tion gives somebody special status. For example, the head of the National Security Council isn't confirmed by the Senate and yet he or she is a very important individual. Brent Skowcroft was important. Now, it might have been because he was respected and had a long term association with those around the President and with the President himself. But, I can't believe the President would say, "I'm not going to talk to Mr. Skowcroft because he wasn't confirmed by the Senate." I miss that connection.

Mr. DELAND. I tend to agree with you, Senator. I don't think we ought to over-emphasize its value. I think where its value does come into play are in those instances in which there are disputes within an Administration, and it's no secret that I had arguments with some—never with the President—but with some others within the administration, and in that instance, the fact that I was Senate-confirmed was a big assistance to me.

Senator CHAFEE. You've been there, so you know.

Mr. DELAND. It basically came down to the fact that they knew that I couldn't be fired without a firestorm on Capitol Hill.

Senator CHAFEE. I think that is important. That is important, but whether you are confirmed by the Senate or not—my point is, if the office is established with some certitude—I'd prefer it by statute, but I suppose the fallback position would be the Executive Order—so that if the office is abolished, then it makes the newspapers and people ask what's going on here.

Mr. DELAND. Well, I think that's the most important aspect—that it be established and I would argue strongly by statute, not by Executive Order. I think it ought to be done by statute.

Senator CHAFEE. Could you, each of you, comment? Mr. Hocker, would you comment briefly on that?

Mr. HOCKER. I would agree. Obviously, I don't have Mr. Deland's inside experience, but confirmation positions, quite frankly, for those of us on the outside who work with the administrations, are in a different box.

Senator CHAFEE. For instance, Mr. Sununu was not confirmed by the Senate, but when he's bounced, it makes front page. So I'm not sure what this confirmed by the Senate means.

Mr. HOCKER. We're dealing with relative conditions here in all of this discussion. And, as Senator Baucus pointed out earlier, a determined Executive can work his will upon all of the process which we're talking about. But, we're talking about relative—checks, balances, and an established level of Congressional attention and concern to an area of national policy.

Senator CHAFEE. Dr. Caldwell, what do you think?

Mr. CALDWELL. Well, the National Environmental Policy Act specified certain standards—very high standards—for appointees to the council. That seems to me to have some significance, that as an independent, nonpartisan body it could command the kind of moral authority which would be hard to attain by a staff member. Therefore, it does seem to me that the Senate does have a role here, inasmuch as we have a National Environmental Policy Act, not just a Presidential Environmental Policy Act.

Senator CHAFEE. How about you Mr. Moorman?

Mr. MOORMAN. It has been a struggle to get the Executive to treat environmental policy at the same level it treats national se-

curity policy, which, from the beginning of the Republic, was understood to be a prime function of the President.

I think in 1970, when CEQ was created, the idea was to create a body which would be a national center for policy making to assist the President. Frankly, it hasn't been that well received by the Executive over the years. Many attempts have been tried to kill CEQ, and the Executive's performance in this area hasn't been very good compared to the Congress for the last 20 years.

I think the Congress should insist that the Executive get serious on this. I think Congress should send a message that it really wants a CEQ and it wants it used.

Senator CHAFEE. How do you explain none of the environmental aides to organizations testifying here? How about that, Mr. Deland? Where are they?

Mr. DELAND. That's a mystery to me and I must say that I'm both surprised and disappointed that they are not here. They have indicated to me, privately, their concern with the administration's proposal. But for, I think, fairly obvious reasons—and disappointing reasons—they're unwilling to stand up and be counted on this. They view this Administration as one that they'd like to work with and don't want to alienate it at the outset. But, they do have an important issue before them, and I am very disappointed. I have relayed directly to the heads of those groups that are not here to state publicly the views that they have relayed to me privately.

Senator CHAFEE. I'll tell you this much—echoing what Senator Durenberger said—if this was a Republican Administration's proposal, they'd have to move this hearing down to the big room downstairs and every environmental organization known to man—and some not known to man—would be represented here, protesting this outrageous action.

Senator BAUCUS. Known to women, too.

Senator CHAFEE. Known to anybody.

[Laughter.]

Mr. DELAND. You're absolutely right, Senator, and there would be pickets around the White House right now.

Senator CHAFEE. The crying—this blatant seizure of power to eliminate the last vestige of protection for the environment that exists in the United States. They would be characterized as attacking the Holy Sea.

Senator BAUCUS. I apologize. I have to leave, but Senator Chafee is going to take over conducting the hearing.

Mr. HOCKER. Senator Chafee, if I may?

Senator Chafee [assuming Chair]. Yes?

Mr. HOCKER. I think it is worth reflecting, as Senator Boxer pointed out, that the major groups' position is on the record and has been made clear.

Senator CHAFEE. Well, I don't know if the major groups are on the record. Here's one from Mr. Hair, and I'll quote from the letter dated April 1—that's pretty timely.

We support the administration in its decision to abolish the Council on Environmental Quality and delegate most of the functions of NEPA to the Environmental Protection Agency.

What's your view of what the environmental groups are saying?

Mr. HOCKER. I can't speak for them, but I believe that they have spoken and that the letter which many of them have jointly sent to the administration expresses their position.

Senator CHAFEE. Let me see. Here are some attachments. A series of letters—one to the President from a group of environmental organizations; American Rivers, Center for Marine Conservation, Defenders of Wildlife, Environmental Defense Fund, Friends of the Earth, Izaak Walton League of America, National Audubon Society, National Parks and Conservation Association, Natural Resources Defense Council, Sierra Club, The Wilderness Society—that's a pretty good lineup.

They say,

The undersigned national organizations respectfully submit this letter to provide our recommendations on the role of the new Office of Environmental Policy and overseeing implementation of the National Environmental Policy Act. We support your decision to create the new Office of Environmental Policy in the White House and to include the director of this office in the meetings of the National Security Council.

I can't see that they oppose this.

Well, they're very gentle about it—if they've got objections, they certainly don't voice them in the traditional manner that we usually get from them.

[Laughter.]

Mr. HOCKER. I don't have the text of the letter in front of me, but it's my understanding that it supports the statutory authorization of the Office of Environmental Policy, rather than simply an Executive action.

Senator CHAFEE. They apparently get tougher and tougher as the letters go along.

[Laughter.]

Senator CHAFEE. This starts in March, when I think they were massaged by the Vice President and then they begin to think a little more about it.

Mr. CALDWELL. Senator Chafee, may I add a comment to that? I, as you know, was involved in the drafting of the National Environmental Policy Act and introduced the idea of the impact statement in the hearing of the Senate Interior Committee on April 16 of 1969. There was a very conspicuous lack of interest on the part of the environmental and conservation groups in that legislation. They did not show up with the exception, I think, of the Sierra Club and the Conservation Foundation, to support the enactment of the National Environmental Policy Act. They have never shown much interest in basic environmental legislation, and for that I think there is a reason.

These are membership organizations. They depend upon dues-paying members for their financial resources and also for their political influence. But, I submit that they are brushfire fighters—they mostly develop membership on the basis of alarms—save this particular species or stop that particular dam. When they discovered what the environmental impact statement could do for them, they then developed an interest in NEPA. But, they never did show much interest in basic legislation—that is not the kind of thing that builds memberships. So, I think that their behavior at this

point is somewhat consistent with the position that they've taken since 1969.

Senator CHAFEE. I put you down as fairly cynical about the environmental organizations.

Mr. CALDWELL. I'm somewhat cynical.

Senator CHAFEE. I wouldn't characterize it as "somewhat."

[Laughter.]

Senator CHAFEE. You're bordering close to total, aren't you?

Mr. CALDWELL. Well, no. I certainly do support their initiatives in many ways. I would not like to see them fail to function.

But, I do regret the lack of political sophistication I think that they have shown, in this case. They endorse the administration's proposal, it seems to me, in a rather premature manner and they don't seem to recognize what so many have said this morning—that the arrangement that is now being proposed is good for a particular Presidential Administration, but not necessarily beyond that.

My position, as you see, is that I do support the President's proposal in having a liaison person in the White House that could coordinate and work with the CEQ, but I think it's important to recall that the CEQ is essentially a body to review, to support investigations—it is not an administrative body, as the EPA would be. The function, then, of the CEQ is, in some sense, what you might even call judicial—that is, it's a body that is dispassionate, or should be, and ought to be regarded as a source of advice on environmental matters and information.

I don't see where the concept of "streamlining"—whatever that may mean—is appropriate in relation to agencies such as the CEQ.

Senator CHAFEE. I guess the problem that bothers me is a point that has been made here—that if an Executive can really do anything he wants. You can put a patsy in as the head of the CEQ and stash him away somewhere and he'll never be heard of again.

What did they say about Vice Presidents—"I'd rather be right than President, but I'd rather be wrong than Vice President." Someone had two sons. One went to sea, and one became Vice President. Neither was ever heard of again.

I guess I bogged down a little bit on the importance of the office and the Senate confirmation that's been stressed here. I know in your statement, Mr. Hocker, you quote Napoleon—that feeling with the institution being important. On the other hand, when I was in a former job in the Navy Department, I'll never forget the Chief of Naval Operations telling me that when things go wrong, you don't necessarily change the system, you change the people. It's the people that count. If you've got a real stemwinder in one of these jobs, he's going to "raise Cain." If you don't, regardless of Senate confirmation or statutory incarnation of the position, nothing's going to happen.

Mr. HOCKER. If I may suggest, Senator, I think that puts it very nicely. But, one of the roles that CEQ can play and that the NEPA process, as a whole, certainly plays, is to act as a barometer of when things are going wrong. As we dilute that, or weaken it or submerge it, then that indicator, on a decision-by-decision basis—which is the role with which I'm most familiar and which is so important—or, on a larger basis, is weakened.

Mr. MOORMAN. May I say something? I think that the move to abolish CEQ should make the Senate suspicious, because it's an indication of a lack of interest in a strong body within the White House to assist in the formulation of environmental policy. I think that should set off alarm bells.

Senator CHAFEE. Well, I'm sure the administration would fervently deny that.

Mr. MOORMAN. I think the Senate should take the long view on this.

Mr. DELAND. Senator, I generally agree with you, that people are more important than organizational charts, and yet within the pecking order of any organization and in the White House, in particular, titles count—perhaps for too much—but they do and there will be inevitable differences between Leon Panetta at OMB and whomever is carrying the environmental banner. If that person is of comparable status, then his or her bargaining hand is greatly enhanced. If you have a Deputy Assistant to the President, which are comparatively a dime a dozen, going against the Chairman of OMB or the Chairman of CEA, it's inevitable that person starts out at a decided disadvantage.

Senator CHAFEE. I appreciate that, except if it's the cousin of the President, or something like that, that comes with added stature. But, the argument, I suppose, from the other side is, "Well, the person we're pitting against the head of OMB is going to be a Cabinet position individual, namely, the head of EPA."

Mr. DELAND. But you have many, many deliberations within the White House in which Cabinet officers are not included.

Senator CHAFEE. But you get there by invitation, don't you?

Mr. DELAND. The internal White House deliberations started with a daily 7:00 a.m. staff meeting, and under this proposal, you would not have the environment represented at that meeting. I think that would be a major loss. Similarly, you would not have a White House voice, as distinct from Cabinet voice, representing the environment at a senior level, and I think that's a major loss.

Senator CHAFEE. Well, I think you're zeroing in on something pretty good here. In other words, what you're saying is that the 7:00 meeting which, I presume, is summoned by the President's administrative Chief of Staff?

Mr. DELAND. In the last Administration, that's correct, yes.

Senator CHAFEE. And he would have gathered there the Press Secretary, I presume, and—

Mr. DELAND.—The National Security Advisor, and the Chairman of Economic Advisors, the Director of OMB, Chairman of CEQ.

Senator CHAFEE. You'd be there?

Mr. DELAND. I was there, yes.

Senator CHAFEE. Well, that is important. Whereas the head of the new Cabinet post of EPA wouldn't be there?

Mr. DELAND. That's correct. There were no Cabinet officers at those meetings.

Senator CHAFEE. So, you'd come over from the old Executive Office Building?

Mr. DELAND. Right. I'd walk over with Michael Boskin and others who were similarly housed in the old Executive Office Building.

Senator CHAFEE. What you're saying is, if it's an Office of Environmental Policy, that person wouldn't be there?

Mr. DELAND. Well, I can't speak for this organization, but there was never somebody of the rank of Deputy Assistant to the President at those meetings. They were only Assistants to the President and those in a special category, such as myself and Michael Boskin—namely, Chairmen of entities with Senate-confirmed status.

Senator CHAFEE. Okay. Well, thank you. I appreciate it very much, your coming. You've been helpful. And, I share the disappointment that the environmental organizations did not show—I think that was very unfortunate—unfortunate for those of us who are trying to ascertain what is the best way to go here. Thank you.

Mr. DELAND. Thank you, Senator.

[Whereupon, at 12:00 noon, the committee adjourned, to reconvene at the call of the Chair.]

[Statements submitted for the record and section 112 of S. 171 follow:]

STATEMENT OF CAROL M. BROWNER, ADMINISTRATOR, U.S.
ENVIRONMENTAL PROTECTION AGENCY

Mr. Chairman and members of the committee, I would like to thank you for the opportunity to appear before you to present the administration's views on transferring to the proposed Department of the Environment most of the functions that have been performed by the Council on Environmental Quality (CEQ) since 1970. The Administration is pledged to strengthening the Nation's commitment to environmental protection, while streamlining our approaches in light of today's needs and priorities.

The National Environmental Policy Act (NEPA) was passed in 1969 and signed into law on January 1, 1970. NEPA was, and remains, a commitment that the government of the United States will include the environment as a fundamental criterion in its decision-making processes, just as it has always considered national security and the economy. NEPA also created CEQ, a three-member Presidential council that was directed “. . . to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in Title 1 [of NEPA]; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.” Surely this was a remarkable charge for 1970, the year of the first Earth Day.

Since 1970 much has occurred. The Council, and its supporting Office of Environmental Quality, have ably overseen the government's implementation of NEPA. The Congress has passed far-reaching environmental legislation—the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and so on. The Environmental Protection Agency was formed, and all the Federal departments and agencies have moved forward to integrate environmental considerations into their day-to-day activities and into their decision-making processes. And NEPA served as the broad philosophical base for this activity.

Now the administration is seeking the creation of a Department of the Environment—an equal member of the President's Cabinet as it makes national decisions affecting such cross-cutting matters as the economy, energy, transportation, agriculture, and defense. The philosophical foundation embodied in NEPA supports the principles that will guide a new environment Department. “Productive harmony” between humans and nature,” interrelations of all components of the natural environment,” “ecological systems,” the link between environmental quality and human welfare and development, and concern for “present and future generations” are not rhetoric but a framework for policy and decisions.

This new department will be committed to moving beyond command and control, media-specific regulation to alternative approaches oriented toward pollution prevention, ecosystem protection, and incentive-based policies. With this commitment, and as a permanent and equal partner in the President's Cabinet, this department will also be well positioned to provide the leadership and support necessary as

NEPA moves on into its third decade. A Department of the Environment will have the scientific and technical expertise, resources, and accountability appropriate to ensure the vigorous implementation of NEPA that the Nation deserves. And it will be well placed to meet the directives your predecessors, Senators Jackson and Muskie, gave to the Council in their 1970 charge.

The Administration is committed to providing a healthy economy that meets our needs today, while preserving the environment for our children and future generations to enjoy. This was the promise of NEPA—and it is the promise of the new Department of the Environment. Bringing this function into the new department is a statement of the administration's commitment to this goal, and our belief that this new institutional framework can only serve to strengthen implementation of this landmark environmental law.

STATEMENT OF THE HONORABLE MICHAEL R. DELAND

Mr. Chairman, members of the committee, good morning. My name is Michael Deland, and from 1989 to 1993, I was Chairman of the President's Council on Environmental Quality. From 1983 to 1989 I was Regional Administrator of the Environmental Protection Agency in New England.

I appreciate the invitation to express my thoughts on the President's proposal to amend the National Environmental Policy Act, to abolish the Council on Environmental Quality, and to transfer most of CEQ's functions to the proposed Department of the Environment.

Like all Americans I wish our new President and Vice-President well and applaud their effort to reorganize and streamline the government. I endorse a reduction in the White House staff as an important, symbolic step in that effort.

I also strongly support elevating EPA to Cabinet rank. Indeed, I was an early and active proponent of a "clean" elevation bill during the last Administration, over the objections of some officials. More than 12 years of my professional career were spent at EPA, after having been inspired to join the agency during the first Earth Day celebrations back in 1970. So it is both my personal and professional view that EPA needs a seat at the Cabinet table.

However, I oppose the recommendation that the Congress should abolish the CEQ and transfer its functions to the new Department of the Environment. Promises of good intentions should not obscure what the President is asking you to approve: a permanent, *statutory* reduction in the advocacy of environmental interests within the Executive Office of the President. If this legislation is adopted in its present form, the environment will be the loser. Efforts to shape the government to meet the needs and priorities of this Presidency are appropriate. However, they should not cavalierly undo over two decades of institutionalized protection for the environment.

The Administration has made its case as to why this measure is necessary. I would like to explain several reasons why to me this action appears unnecessary, and indeed, unwise.

First, the proposal to abolish CEQ requires the Congress to amend the National Environmental Policy Act. That statute is America's environmental "Magna Carta" and it serves as a model for many other nations. Amending NEPA is akin to amending the Constitution: it shouldn't be done for trivial reasons.

The Congress established the Council on Environmental Quality as the institution responsible for NEPA policies and procedures. CEQ is charged with:

- monitoring national environmental conditions and trends,
- analyzing the policies and programs of all Federal entities to determine their compliance with NEPA goals,
- developing and coordinating environmental policies on behalf of the President,
- preparing the President's annual report to Congress on the state of the environment,
- and overseeing the procedural requirements of NEPA which has developed into the environmental impact assessment process.

Environmental issues cut across agency jurisdictions and affect virtually *all* Federal departments and agencies. In 1969, it was this institution -the Congress -that wisely recognized the need for a permanent White House office, headed by Senate-confirmed, Presidential appointees, who would be responsible for drawing *national* environmental policies out of the muddle of parochial, bureaucratic programs. It was a good idea then, and nothing has changed to suggest that it is a bad idea now. The Congress should not undo what it was visionary in creating in 1969.

The elevation of EPA to Cabinet status would not relieve the need for a Senate-confirmed CEQ. In addition to the Department of the Environment, there still would be more than a dozen other departments and agencies with equally valid and often conflicting environmental concerns and missions. As Chairman, I routinely worked with Cabinet secretaries and agency heads to resolve environmental issues which cut across these department and agencies lines, and my staff did the same with their counterparts across the Executive Branch. In a more formal sense, I chaired several interagency task forces such as the Acid Precipitation Task Force established by the Congress in the Clean Air Act Amendments of 1990. This innovative section of the Clean Air Act mandates an ongoing assessment of the effectiveness of the statutory control program, and involves substantial participation from the Departments of Energy, Agriculture, Commerce, Interior, NASA and EPA.

The role of an "honest broker" that mediates between departments is not a function that can be transferred to EPA. One Cabinet department simply cannot impose its views on other departments.

Nor should the Department of the Environment be in charge of resolving environmental impact assessment problems, since it is itself subject to EIA requirements. In practice, EPA's record of compliance with NEPA regulations has been lacking. The agency rates individual EIS's on the relatively narrow basis of whether they include adequate consideration of clean water issues, clean air issues, and the like. CEQ, on the other hand, administers the EIS process on the broader basis of what makes sense for the Executive Branch and the Nation as a whole, including environmental and economic and social issues. This is not a criticism of EPA; it, is simply a matter of the two agencies very different locations and role.

Some others have suggested that because the President and Vice President are committed to environmental protection, it does not matter if the White House environmental office is required by statute or headed by a Senate-confirmed Presidential appointee. But future Administrations may not be as sympathetic to the environment. The Congress needs to guarantee that all future Presidents will have an environmental office in the White House. As Senator Durenburger recently told the Senate Government Affairs Committee, "No economist would trade the Council of Economic Advisers for a deputy assistant [to the President]. No environmentalist should be happy with a comparable trade."

The argument for leaving CEQ in place and building on its current role goes beyond bureaucratic politics. Environmental leaders know that under both Democratic and Republican presidents including the immediate past President—CEQ has made a positive difference for our environment.

Let me put this in personal terms if I may. It was never my practice, nor that of my staff, to leak word about internal debates as a way to enhance our reputations. The regrettable result of that policy was a perception among some observers that CEQ's role in the last Administration was more limited than it was in reality. Others concluded that because I was a spokesman for Administration policy, I had somehow abandoned my role as an environmental advocate.

The CEQ chairman must be an advocate on the inside, and the surest way to be effective in that role was to make the strongest argument I could on the inside while emphasizing the best aspects of the President's policies on the outside. I realize I paid a price for that approach, but I am comfortable in the knowledge that I was able to influence policies for the better.

- For example, today I can tell you that over the strong objections of some in the Bush administration, I intervened to ensure EPA would retain its power to veto damaging wetlands permits, and I worked with senior White House officials to block a last minute move to finalize the controversial and ill-advised 1991 manual for delineating wetlands. With the tacit support of several of the agencies involved, CEQ led the fight for a scientific study to determine best procedures for identifying wetlands.
- I'm proud that I successfully advocated the 10-year moratorium on offshore oil and gas leasing, along the West Coast, the southern Florida coast, and the Georges Bank along the New England coast. I also persuaded budget officials to propose a 46 percent funding increase for National Marine Sanctuaries, and launched the interagency stewardship program called Coastal America.
- When some in the Bush administration wanted to prevent the United States from signing the Antarctic Protocol in the summer of 1991, I worked with the National Security Adviser to the President to bring it to a successful conclusion.
- When it became clear that stratospheric ozone depletion was occurring more rapidly and widely than previously believed, I argued -and the President agreed over the objections of others -that we should unilaterally accelerate the phase-out of ozone-depleting substances.

- Long before the concept of ecosystem management hit the front pages, CEQ laid the groundwork for national policies to conserve biodiversity in a manner that is compatible with economic development. We proposed a national strategy for biodiversity conservation—including a national biological survey—in our 21st annual report in 1991. CEQ held a series of conferences around the country focusing on the inclusion of biodiversity issues in the environmental impact assessment process, and published a useful report on that subject. We helped to ensure that the northern spotted owl was listed as endangered and continued to insist that decisions on listing a species as endangered or threatened should be based on science alone as distinguished from actions which to be taken for recovery.
- When the Department of the Interior wanted to renew 40-year contracts, for the Central Valley Project in California, the largest reclamation project in the West, without environmental analysis, CEQ secured an agreement that the Bureau of Reclamation would prepare EIS's for those contracts. I also helped persuade the President to sign the pro-environment CVP reform legislation.
- CEQ led the development and implementation of executive orders to spur energy efficiency, alternative fuels, waste reduction, and recycling by all Federal entities.
- And with regard to the U.N. Conference on Environment and Development held last June, I met frequently with the President, senior officials, and foreign ministers, and helped resolve disputes regarding the global climate treaty, the funding and structure of the Global Environmental Facility, and establishment of an international biodiversity research program.

This is but a representative list of the issues in which CEQ played a positive role in protecting the environment. In summary, I believe it is accurate to say that with the President's support, I was able to rebuild an institution and position it for leadership in the 1990's.

There is one additional function that will be lost if CEQ is abolished. Over the last three years, CEQ developed on behalf of the President two programs to encourage private sector leadership for the environment: the President's Commission on Environmental Quality or "PCEQ," and the President's Environmental and Conservation Challenge Awards. Without elaborating on the merits of these initiatives at this time, it is clear that each enjoyed broad support in the environmental and business communities and stimulated specific improvements in our environment. The key to their influence and prestige was the involvement of the President. Transferring these initiatives to the Department of the Environment would reduce their influence and prestige; eliminating them altogether would be truly regrettable.

I'm not suggesting that CEQ always succeeded in fulfilling the duties assigned by the Congress. It's true that CEQ lost some battles during my tenure, as it did in previous Administrations. That shouldn't be surprising since the environment competes with many other interests. But I can state emphatically that CEQ made a positive difference in the protection of our environment because we were there as environmental advocates—within the White House complex.

Before I close, I feel it is important to set the record straight on a few small points which were made when the Vice President announced the proposal to abolish CEQ:

- It was stated that a difference between CEQ and the new Office of Environmental Policy would be that CEQ was "over there, across the street" while OEP is in the Old Executive Office Building. Actually, my office was located in the OEOB and there is certainly no reason why CEQ staff could not be there also.
- It was stated that the Director of OEP would participate in meetings of the National Security Council, the National Economic Council, and similar White House entities. There is no innovation in this: I too participated in meetings of the NSC and other policy-making councils, as well as Cabinet meetings and sessions in the Oval Office. I believe that the Director of OEP, a staff person without Senate confirmation, will be at a disadvantage to go head to head with the Director of OMB, the Chairman of CEA, and various Cabinet secretaries.
- It was stated that the CEQ annual report has been superseded by the reports of various nongovernmental groups. Actually, the CEQ report, which is the President's annual report to Congress on the state of the environment, is the only comprehensive reference available on the environmental policies and programs of the United States Government. I, for one, believe that the government should be required to provide such a report on an annual basis and should not be transferred to a Department that possesses only a portion of the Federal Government's environmental responsibilities.

In conclusion, no matter what policymaking structure one would devise on paper, environmental issues will always need coordination and leadership at the White House level. NEPA established a permanent institution, answerable to the people's representatives, to fulfill that function and CEQ has demonstrated its ability to rise to the challenge. By contrast, a lower-level White House office with less than dozen staff people, that is not accountable to the Congress, would not have the resources or the clout to carry out NEPA responsibilities. I strongly urge the committee to keep the CEQ in place and to fulfill the NEPA vision.

STATEMENT BY LYNTON K. CALDWELL, PROFESSOR OF PUBLIC AND ENVIRONMENTAL AFFAIRS, INDIANA UNIVERSITY

I, Lynton K. Caldwell, am Professor in the School of Public and Environmental Affairs and the Arthur F. Bentley Professor of Political Science, Emeritus at Indiana University. In 1968 through an arrangement between Russell Train, then President of the Conservation Foundation, and Senator Henry Jackson, chairman of the Senate Committee on Interior and Insular Affairs, I was made available to the committee in developing legislation for the protection of the environment. During most of 1968 and 1969 I worked with the Interior Committee staff and the Congressional Research Service in extensive interviews with Federal agency personnel and with environmental scientists in shaping the legislation that became the National Environmental Policy Act. In 1968 prepared a White Paper for the Senate on "A National Policy for the Environment." My particular contributions to NEPA were the concept of the environmental impact statement, and the functions intended for the Council on Environmental Quality. I was one of the invited participants in Lyndon Johnson's White House Conference on Natural Beauty (1965) and have since served on numerous governmental advisory boards and commissions—notably the National Commission on Materials Policy; the Environmental Advisory Board to the Corps of Engineers; the National Research Council Environmental Studies Board; and the Office of Technology Assessment and the Science Advisory Board to the International Joint Commission.

The White House Press Release of 8 February 1992, announcing an intention to establish a White House Office on Environmental Policy and to elevate the Environmental Protection Agency to cabinet status called also for the abolition of the Council on Environmental Quality (CEQ). To anyone familiar with the purpose of the National Environmental Policy Act (NEPA) and the intended functions of the CEQ, the arguments advanced by the February 8 Press Release are unpersuasive. A White House Office on Environmental Policy might further the objectives of NEPA and enhance the President's "ability to coordinate and craft environmental policy." It could be an action arm of the President performing administrative functions differentiated from the review and advisory role of the CEQ set forth in NEPA. A policymaking and coordinating White House Office could not replace the CEQ, the functions of which are fundamentally different. Proposals to replace the CEQ suggest a lack of understanding of the purpose and legislative history of NEPA and the reasons for establishment of a statutory Council on Environmental Quality.

The current proposal to replace the CEQ distributing its functions between the White House staff and one or more Cabinet-level line agencies is the third of its kind. The first proposal, intended to head-off an independent council, was advanced by Dr. Lee Dubridge, the President's Science Advisor, at a hearing before the Senate Committee on Interior and Insular Affairs on April 16, 1968.

The Nixon administration by Executive Order 11472 (May 19, 1969) established an Environmental Quality Council consisting of the President, the Vice-President, and six cabinet secretaries. The Office of Science and Technology was to provide staff assistance to the President's Council. The initiative lacked credibility. The Senate Interior Committee doubted that the Council, chaired by the President, would in fact ever become functional—its duties would be delegated to subordinate staff lacking the status, ability, or incentive to develop a coordinated environmental policy. This non-statutory council was essentially political, consisting of presidential appointees, with no assurance of its survival under subsequent administrations. It lacked the continuity, independence, and expertise in environmental matters sought in numerous bills for ecological oversight introduced in the 90th and 91st Congresses.

The second effort to dispense with the CEQ was made in 1977 by President Carter's Reorganization Advisory Group. Options recommended were: (1) transfer the Council and its functions to the Department of the Interior, (2) retain the CEQ

but with reduced staff and functions, transferring its oversight responsibilities to the EPA, and (3) abolish the Council completely, perhaps replacing it with an advisory to the President.

The current White House proposal resembles the third option recommended by Carter's Reorganization Project. This most recent proposal to the CEQ follows a recommendation of a Carnegie Council task force, very similar in its rationale to President Carter's announced goal of "streamlining the Executive Office of the President, reducing the size of the government and cutting down on Federal spending." Upon reflection, however, President Carter did not follow these recommendations; he retained the CEQ as established by the National Environmental Policy Act and, by Executive Order 11991 (24 May 1977), issued regulations to strengthen and clarify implementation of NEPA. To each of these three proposals to abolish an independent CEQ there are five fundamental objections.

First: The breadth, diversity, and complex multi-disciplinary inter relatedness of environmental issues exceed the comprehension of any single individual. The long-range significance and scientific findings characterizing environmental issues, and their ramifications including economic affairs, call for informed and balanced judgment more likely to be found in a multi-member advisory body. Many of the numerous environmental policy bills introduced in the 90th and 91st Congresses called for councils of more than three members, representing a broad range of public interests in the environment. In accordance with Title II of NEPA, the first CEQ appointed by President Nixon possessed outstanding competence in law, science, and public information.

The qualifications of Council members were stipulated in Title II Section 202 of NEPA as follows:

Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in Title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

A council possessing these qualities could, with presidential support, command a moral authority hardly possible for any member of the White House staff, not confirmed by the Senate and answerable only to the President.

Second: Effective environmental policy requires a continuity and non-partisan character unlikely to be obtained through oversight by a White House staff member. The restructuring of environmental policy as now proposed might last no longer than a president's term of office. As a statutory agency the CEQ survived the Reagan administration which would surely have abolished it had it been non-statutory, existing only at the pleasure of the president.

The premature and politically naive endorsement of the White House proposal by several environmental organizations reflects inadequate comprehension of the National Environmental Policy Act. These environmental organizations have largely focused on specific issues (e.g. air and water pollution, endangered species, wilderness designation). Limited focus may be the most effective use of their resources. Yet in fighting "brush fires" they often neglect the broader and more fundamental principles of environmental policy that might reduce the alarms and crises that help these organizations build and maintain memberships that are essential to their funding and political influence. With some notable exceptions (e.g. the Conservation Foundation and the Sierra Club) non-governmental environmental action groups showed little interest in the drafting of NEPA. For many, interest in the Act dated from their discovery that they could use the environmental impact statement to stop or delay Federal projects or programs which they opposed.

Third: It is improbable that, without the independent oversight provided by the CEQ, any combination of cabinet officers would be able to implement NEPA in a coordinated manner in accordance with the principles set out in Sections 101 and 102. A Special Environmental Assistant on the White House staff, in cooperation with an independent CEQ could conceivably strengthen coordination of environmental policy among the cabinet level departments and their sub-agencies. To place responsibility for the implementation of NEPA in a Department of the Environment or any other line agency with regulatory functions would defeat a basic principle of the statute—which is to provide an independent advisory and oversight forum for review of the performance of the Federal agencies as they affect the environmental quality of the nation.

Cabinet level departments and their bureaus largely represent the interests of particular economic sectors—farming, labor, commerce, transportation, mining, forestry, cities, veterans, among others. Although required by NEPA to observe its requirements as part of their organic laws, the departments have largely been their own judges as to compliance—except in observance of the impact statement requirement of Section 102(2)(c), a procedure which has been overseen administratively the CEQ and enforced by the Federal courts. To place responsibility for enforcing NEPA in a cabinet level department is to discount the improbability of any one department criticizing or investigating the behavior of other co-equal departments.

Four: The White House proposal evidences none of the careful consideration and broad consultation that preceded the adoption of NEPA. More than a year was taken in the drafting of NEPA with input from both house of the Congress. Its terms were carefully considered including alternative provisions such as those advanced by the White House Press Release of February 8, 1993. A number of “white papers” were prepared for the House and Senate committees and in July of 1969 a Joint House-Senate Colloquium on a National Policy for the Environment was convened at which a broad representation of interests was present. The thorough and comprehensive preparation for NEPA contrasts sharply with the timing of the White House Press Release of February 8, 1993.

The constitution requires that the President take care that the laws be faithfully executed—a consideration relevant to implementation of a statute covering all Federal departments and agencies. The administration of the National Environmental Policy Act was placed in the Executive Office of the President to confirm the responsibility of the President in the administration of this law embracing all Federal agencies. During the drafting of NEPA the possibility of a Joint House-Senate Committee on the Environment, with oversight responsibility for NEPA, was considered. Unlike the preeminent powers of the President in foreign policy and military affairs, the environment covers a vast array of issues in which the Congress determines policy. The President enjoys no preeminent power “to craft and coordinate environmental policy” *exclusive* of the Congress. Congress has exercised its responsibility for NEPA through a number of oversight hearings. It is doubtful that it would do so if the responsibilities of the CEQ were assumed by a White House staff member not confirmed by the Senate and responsible solely to the President.

Five: NEPA is national policy, not merely presidential policy. NEPA originated in the Congress, not in the White House. Deliberation by the Congress is called for if the terms of NEPA are to be changed.

Six: The General Accounting Office in its 1981 review of the CEQ (CED-81-66) found that it had performed its functions effectively and that consensus of opinion was that “CEQ’s role is unique and is best filled by the current arrangements of primarily a nonregulatory advisory body within the Executive Office of the President.”

In summary, what is being proposed in the White House press release of 2/8/93 is in principle, if not in all detail, the repeal of the National Environmental Policy Act of 1969. This legislation has been widely emulated in other countries and has set an unprecedented example of American leadership in environmental policy. The arguments advanced by the White House press release for “streamlining—more efficient and effective focusing on environmental policy,” and returning NEPA responsibilities “more appropriately and effectively” to relevant Federal agencies (unnamed) strongly suggests an inference that the authors of the release never read the Act nor reviewed its legislative history. No economy or significant budget reduction has been demonstrated in eliminating the CEQ. If environment is to receive a higher priority than that accorded by the preceding administrations, no significant reduction of staff would appear to be feasible. Indeed the CEQ has never been given the funding and staffing adequate to fulfill its mandate under NEPA. Nevertheless within its limited resources the CEQ has effectively performed its statutory functions.

If adopted, the White House proposal, as released on February 8, would be widely viewed as a retrograde action hardly in keeping with representations made by the United States delegation to the United Nations Conference on Environment and Development. NEPA, as enacted, provides the President with all the authority and means of implementation needed for administration of a national policy for the environment. A White House Environmental Policy Office charged with expediting and assisting the implementation of environmental policy in the Federal agencies—in cooperation with the review, advisory and trend assessment of functions of the CEQ—could truly strengthen the government’s environmental commitment. This could be accomplished without rewriting the National Environmental Policy Act and without complicating the elevation of EPA to cabinet Status. It is hard to un-

derstand why the Clinton administration would introduce so abrupt and ill-considered a change in national policy at this time. It would be even more difficult to understand why the Congress would undervalue the careful work of its predecessors in this proposed ad hoc restructuring of the nation's basic environmental policy statute.

TESTIMONY OF JAMES WATT MOORMAN

My name is James Moorman. I am a practicing environmental attorney with the law firm of Cadwalader, Wickersham & Taft. During President Carter's administration, I was Assistant Attorney General for the Land & Natural Resources Division. Prior to that, I served for six years on the staff of the Sierra Club Legal Defense Fund in San Francisco and was that organization's founding Executive Director. Prior to that I served as the environmental staff attorney for the Center for Law and Social Policy in Washington, D.C. In that capacity, I was best known for obtaining the injunction against the Trans-Alaska Pipeline based, among other things, on the failure of the Secretary of the Interior to prepare an environmental impact statement. In 1970 I assisted in the founding of the Environmental Law Reporter and The Environmental Law Institute. I have served on the Board of Directors of The Environmental Law Institute during most of its existence, including three years as Chairman.

I wish to thank the committee on Environment & Public Works for extending me their courteous invitation to testify at these hearings. I am very interested in the subject of these hearings concerning the fate of the Council on Environmental Quality. Since my days at the Center for Law and Social Policy, when I became involved with the Trans-Alaska Pipeline case, to the present, I have been constantly involved with the National Environmental Policy Act matters. Throughout this period, I have dealt from time to time with the CEQ, and have been a close observer of its activities. During my tenure as Assistant Attorney General for Land & Natural Resources, in particular, I worked closely with CEQ and took close note of its activities. At that time I worked out a coordinating program whereby the CEQ reviewed the Division's briefs interpreting NEPA before they were filed with the courts. This was a very useful and helpful practice, ensuring a uniformity of interpretation of NEPA throughout the Federal Government. We also established a program under which some of the Division's NEPA attorneys spent temporary six-month tours at CEQ. This was a significant cooperative program which greatly broadened and deepened the experience of the participants and provided both agencies with enhanced expertise. Of great satisfaction to me was the fact that the CEQ took an interest in the overall mission of the Lands Division and assisted us in achieving our mutual goals. For example, the CEQ helped us identify the need for enhanced enforcement in the field of wildlife protection law. With the CEQ's assistance, the Division was able to garner the resources for and establish a Wildlife Law Section.

I believe that Congress should, and I strongly urge the Congress to preserve the Council on Environmental Quality in its present form. My reasons are essentially three, as follows:

First, a strong CEQ is a necessary corrective of the tendency of the modern Executive Branch to be negative with regard to environmental initiatives. Virtually every major environmental initiative of the last twenty-five years (including NEPA) has originated in Congress. Precious little has originated from the executive. Once passed, getting the executive to promulgate the implementing regulations has often been difficult. Pressure from Congress, the courts, and citizen organizations has often been necessary to overcome the resistance of the executive. It does not seem to matter whether a Republican or a Democrat is in the White House; under both parties this tendency seems to persist in more or less degree. The problem seems to stem from a perennial hostility on the part of OMB, the economists, and the political types associated with the executive. As day follows night, whenever a new President comes into office, a new run is made at CEQ by these folks in the flush of the honeymoon period. The thinking seems to be that in this little period when the President gets most of what he wants, "let's kill off that pesky CEQ."

The anti-environment bias of the executive branch has resulted in confusion and incoherence in the development of environmental policy over the last two decades. It seems self evident that the widely noted complexity and jerry-built nature of American environmental law stems directly from the lack of leadership of the executive. The fact of this negative attitude is one of the reasons CEQ is needed. Obviously not the full answer to this problem, CEQ is a decided ameliorative. CEQ has continually provided a voice of right and reason where it has been most needed. Of

course, a determined executive can, and has, minimized its influence. But CEQ has demonstrated resilient staying power. In those eras when it has been allowed to function to the fullest, it has done magnificent work. The Global 2000 Report assembled and published by the Carter CEQ is without question the finest such report of its kind and has had far reaching influence throughout the world. CEQ is the vehicle a President needs and should want—indeed and would have to invent—if he is serious about taking the initiative on environmental protection. CEQ should remain in place as a corrective and, hopefully, as the instrument of a President with the courage to change two decades of executive negativism.

Second, CEQ is essential to the proper functioning of the National Environmental Policy Act. NEPA's principle feature, other than CEQ, is the environmental impact statement, or EIS. An EIS is required before a Federal agency may take an action which may significantly affect the human environment. Environmental consequences must be rigorously explored. Alternatives must be pursued. The EIS is particularly worth noting for one of its most useful qualities. It is a devilishly wonderful device because it requires an agency to set forth what is wrong with its pet projects. The agencies have always hated EISs. Some have successfully resisted preparing them to this day. Because none of the agencies have a stake in the implementation of the EIS, the EIS requires its own agency to tend it and promote it. That agency is CEQ. CEQ has promulgated the regulations which govern and interpret EIS and has taken numerous actions that fall under the general title of "dispute resolution" to ensure the smooth preparation of EISs in the multi-agency context. In order for CEQ to play this role, CEQ must have sufficient weight and status to be taken seriously. The current configuration is far superior to any of the alternatives currently being promoted.

A third point I would like to make is that CEQ has been a success story. CEQ is not broken, so why fix it? In this regard it might be useful to recall CEQ's origin at the very outset of the environmental era. NEPA was not the product of an intense campaign of lobbying and counter-lobbying we have come to associate with environmental legislation. Rather it was the product of deliberate policy making by Congress. A number of Congressional leaders wanted to take action to respond to rising public concern about environmental protection. This was especially so in the wake of the Santa Barbara oil spill. A colloquium was organized for members and staff featuring Professor Lynton Caldwell from the University of Indiana in Bloomington. NEPA was seen as a way to control the Federal Government's very heavy impact on the environment. It was passed as a model of good government without the distortions of lobbying. It was a rarity: a well drafted statute. Signed into law by President Nixon on January 1, 1970, it was his first official act of the new decade. It punctuated the new environmental era, and it has been a great success. It is the "citizen's law" that provides the mechanism whereby individual citizens can discover and take action on what the government plans for them. The act has been much copied. About half the states have adopted some variant of NEPA, as have 84 nations.

NEPA and CEQ have served us well for 22 years. I challenge anyone to find anything CEQ ever did that we as a Nation would regret. A brainchild of the Congress, it has served the Nation well. It is not broken. It requires no modification or other fixing. I strongly urge the Congress to recognize its fine work in creating CEQ and do the Nation a favor by keeping CEQ as it is for future generations.

STATEMENT OF PHILIP M. HOCKER

PRESIDENT, MINERAL POLICY CENTER

Mister Chairman, members of the committee:

Thank you very much for the opportunity to present my views regarding the need to retain the Council on Environmental Quality today.

My name is Philip M. Hocker. In the past I have held local, state, regional, and national office in the Sierra Club, and served three years as its National Treasurer and chief financial officer. I currently hold the office of President and Executive Director of Mineral Policy Center. The Center is a non-profit organization dedicated to cleaning up the mining industry and reforming the 1872 Mining Law I speak today as a concerned individual with a long history of involvement with the on-the-ground workings of the National Environmental Policy Act and the Council on Environmental Quality, and not as the spokesman of any organization.

I strongly support retention of the Council on Environmental Quality as an institutionalized voice for environmental protection, and for oversight of the National Environmental Policy Act process, within the Executive Office.

Strengthening the NEPA Process

My experience with CEQ and NEPA stems from practical issues and events, most of which occurred before I came to live inside the Beltway:

The National Environmental Policy Act has had profound impacts on Federal decision making throughout the country. Some of the decisions affected are for large projects, which may come to the attention of Washington, but the vast majority are not. They are little actions—the approval of a timber sale, the routing of a highway, the decision to open a National Forest area near Yellowstone National Park to oil exploration. NEPA ensures that environmental concerns are addressed in a public forum before these decisions are made. As you know, NEPA does not direct that the environmentally preferable alternative be selected. It merely requires that alternatives be analyzed, and that the agency take a “hard look” at the impacts before allowing a major Federal action.

It has been surprisingly hard to get the agencies to do that—and the difficulty demonstrates why the Act is so important. Even though no specific decision is directed by NEPA, the Federal agencies have tried through a variety of subterfuges to avoid preparing Environmental Impact Statements when they should.

In the face of this resistance, the Council's publication, “Regulations for Implementing the Procedural Provisions of The National Environmental Policy Act,” is one of the most important tools for environmental protection available to concerned citizens around the country. Speaking with the voice of the President, it prescribes when Environmental Impact Statements are required, what their contents must address, and how they are to be managed.

As a concerned citizen volunteer in Wyoming, I closely followed environmental evaluations performed by the Federal Aviation Administration, the U.S. Forest Service, the National Park Service, and the Bureau of Land Management. Time after time, the CEQ regulations were an important tool which I and other concerned citizens used to press the agencies to fully evaluate the impacts of their proposals. The fact that these regulations were fundamental and authoritative, and arose from the authority of the White House gave them more impact than anything EPA—even EPA as a Cabinet-level agency—could produce.

The work continues. CEQ has had an important impact recently in improving the Bureau of Land Management's NEPA performance on mining projects. These modern mines are vast endeavors involving immense excavations and large hazardous-waste threats to groundwater quality. Using the Mining Law of 1872 as an excuse, the BLM has done very few adequate Environmental Impact Studies on its mining approvals.

Near Questa, New Mexico, the Bureau was poised three years ago to approve a large new mining waste dump on Guadalupe Mountain for MolyCorp—a molybdenum mining company. Despite the fact that the proposed dump threatened to have major water and air quality impacts, the Bureau had concluded that no alternatives to the company's proposal would be analyzed. Protests from local citizens, the EPA, and several environmental groups had no impact on the Bureau. However, when the BLM State Director received a letter from the Executive Office of the President/Council on Environmental Quality in January, 1990, the Bureau reconsidered its accommodating position.

These problems are far from over. This February, the Bureau of Land Management approved a “Finding of No Significant Impact” for the Robinson Project near Ely, Nevada. This finding was based on a cursory Environmental Assessment. The Robinson Project is a copper-and-gold mining complex which will involve mining almost a billion tons of material and covering several square miles with mines, wastes, and associated construction. It will create vast new waste dumps in an area where similar dumps in the past have generated large quantities of contaminated water. Undaunted, BLM formally “found no significant impact” and has declined to conduct a comprehensive impact study.

I hope the Council on Environmental Quality will be available to assist in improving BLM's NEPA compliance—and achieving a better final environmental plan for this project. This is an immediate problem, and no other Federal agency will serve this purpose.

As the CEQ Regulations themselves observe, “Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action.” (40 CFR 1500.1(c)) The work that CEQ has performed has fostered excellent Federal action on many occasions; the planet is the better for it.

Institutionalizing Environmental Improvement

Concern for environmental values must be built into the fabric of government; it must not depend on the sympathy or wisdom of a few individuals at the top. That was the goal of NEPA, and the purpose of establishing the Council on Environmental Quality.

In 1779, John Adams warned us to seek "A government of laws, and not of men." Through eight years of Reagan Administration hostility toward the environment, and four more of ambiguity, the Council continued to do important work to sustain the NEPA process. That is a credit to the Council's staff, and to the wisdom of its originators and the strength and stability of the law.

Now, we have a new Administration which is pledged and dedicated to be more progressive on environmental issues. Some have argued that an Administration so pledged and so dedicated does not need to have a statutorily established organ for environmental oversight and initiative.

I support the Clinton Administration's environmental aspirations with all my heart. However, I respectfully disagree with the administration's proposal to abolish the Council on Environmental Quality. I submit that proposal is shortsighted. First, CEQ serves a vital role as NEPA overseer which cannot be fulfilled as well either by EPA or by a staff group like the proposed Office of Environmental Policy. Second, this Administration may not last forever, and however fine its environmental policies may prove, it will be followed by another which may be less committed.

We cannot succeed in reshaping human endeavor to harmonize with our environment without patience and a long view of history. In the short run, there will always be an opportunity to turn a quick profit by trashing the Commons. Governments and agencies are not, and will not become, suddenly immune to that temptation. Our goal must be not simply to act wisely today, or over the next four or eight or sixteen years, but to build institutions which promote wise action Long beyond our term.

If the Clinton Administration accomplishes modest successes toward environmental protection, and builds strong institutions which survive it, it will have served the nation, and the planet, well. If it achieves bold victories on the issues of the day, but leaves weak institutions behind, we will be the poorer in the long run. As Napoleon put it, "Incidents ought not to govern policy, but policy, incidents. . . . To be hurried away by every event is to have no political system at all."

The Council on Environmental Quality is a necessary cornerstone for that institutional construction.

Conclusion

Thank you very much for the opportunity to present my views regarding the need to retain the Council on Environmental Quality today. I hope the committee will consider this issue carefully before moving legislation which may undo almost a quarter-century of forward progress. The Council serves an important role; it should be retained.

I would be happy to answer any questions you may have.

American Forests · American Hiking Society · American Rivers
 California Native Plant Society · Center for Marine Conservation
 Conservation Law Foundation · Federal Forest Reform · Fund for Animals
 Grand Canyon Trust · Greater Yellowstone Coalition
 Oregon Natural Resources Council · Pacific Rivers Council · People for Puget Sound
 Rachel Carson Council · Rails to Trails Conservancy · Scenic America
 Student Conservation Association · Texas Committee on Natural Resources

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 March 17, 1993

Senator John Glenn, Chairman
 Committee on Governmental Affairs
 DS-340 Dirksen Senate Office Building
 Washington, D.C. 20510-6250

Dear Chairman Glenn:

You may soon be considering legislation on two environmental initiatives of the Clinton Administration: elevating the Environmental Protection Agency to Cabinet level, and replacing the President's Council on Environmental Quality (CEQ) with the Office of Environmental Policy (OEP).

It is crucial to the success of both proposals that they be implemented properly, so as to meet the basic goal that Congress set forth in the National Environmental Policy Act of 1969 (NEPA): for the federal government to act "as trustee of the environment for succeeding generations." These changes should allow President Clinton and Vice President Gore to demonstrate leadership by assuring that environmental issues are effectively included in White House decisionmaking, just as their predecessors did for other issues via the Office of Management and Budget, the National Security Council, the Council of Economic Advisers, and the Office of the U.S. Trade Representative.

These key offices, as well as the Council on Environmental Quality, were created by Congress and located within the Executive Office of the President. Like these offices, it is necessary for any new Office of Environmental Policy that would replace CEQ to be established by statute.

This is the only way for the established legal authority of NEPA to be maintained, and for the Office of Environmental Policy to have the necessary stature to interact effectively with other Presidential offices, Cabinet departments and independent agencies, and Congress, and to continue to receive the "substantial deference" that the federal courts have given to CEQ. Without this statutory foundation, the new OEP will have no more legal basis or administrative authority than did the late Council on Competitiveness. As we near the 21st century, we should be long past the time of

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debating the need for a permanent Presidential environmental policy office to work with the other Presidential offices for budget, national security, economics, and trade policy.

As representatives of the undersigned national and regional organizations, we urge you to help assure that environmental policy development, interagency coordination of NEPA responsibilities, and other essential functions assigned by Congress to CEQ over the past 23 years remain within the Executive Office of the President, rather than being transferred to a line agency or department such as the new cabinet-level EPA. Nor should these duties be assigned to the Office of Management and Budget or other units within the Executive Office of the President, because they lack the necessary expertise and policy orientation.

There is general agreement within the environmental community that Title II of NEPA (42 USC 4341 et seq.) could be combined with the Environmental Quality Improvement Act of 1970 (42 USC 4372 et seq.) and revised very simply to: (1) change the names of the Council and Office of Environmental Quality to the Office of Environmental Policy; (2) provide for a single Director rather than a three-member Council and retain existing law to provide for staff; (3) delete or transfer to EPA the annual environmental report requirement; (4) reconfirm the new office's NEPA oversight authority; and (5) retain statutory authority within the Executive Office of the President. *Very few sections of existing law need to be altered to accomplish these changes.*

This approach provides a "win-win" solution for all concerned: the White House would achieve its objective to replace CEQ with a smaller office having a single Director, and the office would remain within the Executive Office of the President, able to provide staff for President Clinton and Vice President Gore, with its vital NEPA oversight role intact and with a basis in law comparable to other key Presidential offices.

At a recent Senate hearing on legislation to make EPA a Cabinet Department, EPA Administrator Browner testified that "It is time for a permanent chair at the table, institutionalizing the environment as a critical ingredient in the mix of Federal decisionmaking." We agree. This statutory permanence is as essential for CEQ or its successor in the Executive Office of the President as it is for EPA in the Cabinet.

We therefore seek your assistance in ensuring that NEPA's oversight functions, including CEQ's existing legal authority and precedents -- as well as any new Office of Environmental Policy -- are effectively maintained for this and future administrations. We would be glad to work with your staff and with the White House to prepare and support legislation that accomplishes this goal.

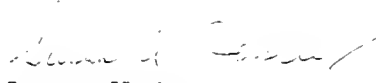
March 17, 1993

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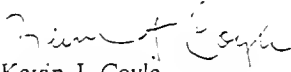
Sincerely,



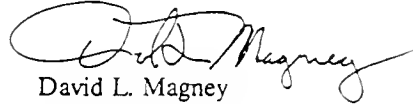
R. Neil Sampson
Executive Vice President
American Forests



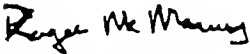
Susan A. Henley
Executive Director
American Hiking Society



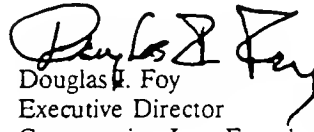
Kevin J. Coyle
President
American Rivers



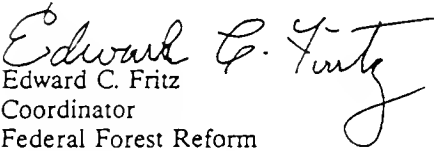
David L. Magney
President
California Native Plant Society



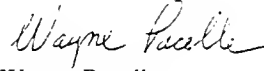
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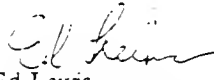
Edward C. Fritz
Coordinator
Federal Forest Reform



Wayne Pacelle
National Director
Fund for Animals



Edward M. Norton, Jr.
President
Grand Canyon Trust



Ed Lewis
Executive Director
Greater Yellowstone Coalition

March 17, 1993

Page 4




Andy Kerr
 Director of Conservation
 Oregon Natural Resources Council



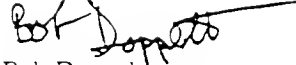
Kathy Fletcher
 Executive Director
 People for Puget Sound



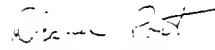
David Burwell
 President
 Rails to Trails Conservancy



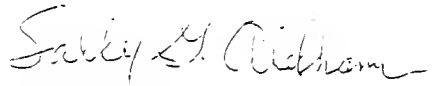
T. Destry Jarvis
 Executive Vice President
 Student Conservation Association



Bob Doppelt
 Executive Director
 Pacific Rivers Council



Diana Post
 Executive Director
 Rachel Carson Council



Sally G. Oldham
 President
 Scenic America



Susan Petersen
 Chairman
 Texas Committee on
 Natural Resources

cc: President William Jefferson Clinton
 Vice President Albert Gore, Jr.

American Rivers • Center for Marine Conservation
 Defenders of Wildlife • Environmental Defense Fund
 Friends of the Earth • Izaak Walton League of America
 National Audubon Society
 National Parks and Conservation Association
 Natural Resources Defense Council
 Sierra Club • The Wilderness Society

March 3, 1993

The Honorable William Jefferson Clinton
 President of the United States
 The White House
 1600 Pennsylvania Avenue, N.W.
 Washington, D.C. 20500

Dear Mr. President:

The undersigned national environmental organizations respectfully submit this letter to provide our recommendations on the role of the new Office of Environmental Policy in overseeing implementation of the National Environmental Policy Act (NEPA).

We support your decision to create the new Office of Environmental Policy in the White House and to include the director of this office in the meetings of the National Security Council, the National Economic Council, and the Domestic Policy Council. This step demonstrates the importance of environmental protection to your administration and your commitment to integrate concern for the environment into all aspects of national policy making.

One question left open by your recent decision is whether the new office should assume the existing Council on Environmental Quality's function of overseeing implementation of the National Environmental Policy Act, or whether some or all of these responsibilities should be transferred out of the Executive Office of the President. In our view it is essential to the continued successful implementation of NEPA that the basic NEPA oversight function currently assigned to the Council be transferred to the new Office of Environmental Policy.

Letter to President Clinton
Page 2

The National Environmental Policy Act is the magna carta of environmental protection in America. It declares environmental quality to be the national policy of the United States. In order to carry out this policy, NEPA requires all federal agencies to ensure that environmental values receive appropriate consideration and specifically directs the preparation of detailed written assessments of proposed federal actions significantly affecting the quality of the human environment. One of the primary functions of the Council on Environmental Quality, which was established by NEPA, is to oversee federal agency implementation of NEPA, including coordination of environmental and natural resource programs across all agencies and the resolution of interagency disputes on environmental issues.

We believe the new Office of Environmental Policy should continue to carry out this mandate to coordinate environmental policy among federal agencies by assuming the Council's function as overseer of NEPA implementation. NEPA establishes the key environmental decision-making process in the federal government, and therefore it is appropriate that the White House office with overall responsibility for coordinating environmental policy oversee the NEPA process. To be effective, this coordination and oversight function should continue to be carried out by the Executive Office of the President. If these functions were transferred to a line agency, coordination and mediation of NEPA implementation would not be as effective. It also would not be appropriate to place these functions in the Office of Management and Budget or a different office within the Executive Office of the President other than the Office of Environmental Policy.

We believe that the most straightforward way to accomplish this proposal would be to submit legislation to Congress that would amend NEPA and the Environmental Quality Improvement Act by transferring the basic functions of the existing Council on Environmental Quality and the Office of Environmental Quality to the new Office of Environmental Policy. At the same time, in the interests of economy, we recommend eliminating certain responsibilities currently held by the Council on Environmental Quality, such as preparation of the annual report on the environment. We would be happy to work with you in developing this legislative proposal.

Letter to President Carter
Page 3

Thank you very much for your consideration of our views on this important matter.

Sincerely,

Kevin J. Coyle

Kevin Coyle
President
American Rivers

Roger McManus

Rogers McManus
President
Center for Marine Conservation

Rodger Schlickeisen

Rodger Schlickeisen
President
Defenders of Wildlife

Fred Krupp

Fred Krupp
Executive Director
Environmental Defense Fund

Jane Perkins

Jane Perkins
President
Friends of the Earth

Maitland Sharpe

Maitland Sharpe
Executive Director
Izaak Walton League of America

Peter A.A. Berle

Peter A.A. Berle
President
National Audubon Society

Paul C. Pritchard

Paul C. Pritchard
President
National Parks and Conservation
Association

John Adams

John Adams
Executive Director
Natural Resources Defense
Council

Carl Pope

Carl Pope
Executive Director
Sierra Club

Karin P. Sheldon

Karin Sheldon
Acting President
The Wilderness Society



Center for Marine Conservation

Roger E. McManus
President

April 1, 1994

Chairman Max Baucus
Committee on Environment and Public Works
United States Senate
SD-456 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

Please consider this letter as written testimony submitted for your hearing today, April 1, on S 171, and for inclusion in the record for the hearing. I apologize for the lateness of this submission, but the short notice of the hearing has prevented a more timely and thorough response. If it is possible for you to respond positively to my letter dated March 31, requesting the hearing record be kept open until after the recess, and perhaps scheduling one additional hearing on this important legislation, I along with many others would appreciate the opportunity to provide more thorough comments.

Mr. Chairman, and members of the Committee, the Center for Marine Conservation, and almost all of the national conservation organizations oppose this legislation with respect to the proposed changes regarding the National Environmental Policy Act (NEPA). And, we are being joined by a growing large number of regional and local conservation organizations.

NEPA has been termed the "linchpin" and "Magna Carta" of U.S. environmental law. Chief among its carefully crafted and time tested provisions are its requirements for Federal agencies to undergo environmental analyses of their proposed major actions. These analyses review the pros and cons of the alternatives available to the Agency, and are open for public review and comment. While NEPA does not dictate specific decisions, its success can be measured most readily by the fact that the consideration of environmental impacts is on the agenda of almost every major government action. NEPA's success has resulted in similar statutes being adopted by many state and foreign governments, and similar procedures are increasingly being incorporated by international aid agencies. The importance of environmental impact analyses procedures was highlighted too at the recent UN Conference on Environment and Development. NEPA is a



unique American invention that has become a major contribution to improving the world's environment. Importantly, scholars of the environmental impact analysis process note that such procedures work best when they are administered by the executive rather than relegated to a line, environmental agency which frequently lacks the clout to dictate compliance to its frequently more powerful, fellow line agencies.

The evolution of the Administration's decision on this issue and the justifications given for it, are not comforting to most of us who have worked throughout the past two decades to improve and safeguard this nation's environment, but equally important to ensure that government decision making is transparent to public oversight and open to citizen participation. NEPA and its implementing agency, the Council on Environmental Quality (CEQ) have been important tools for achieving these goals. The continuity of the Council and its strategic location in the Executive Office of the President (EOP), have been key factors in its success to provide cross-cutting coordination of environmental policy among line agencies of the federal government, and, particularly, to ensure effective resolution of intra-agency problems and interagency conflicts with regard to the implementation of NEPA. CEQ has statutory authority to provide the President advice on environmental policy, adding a permanent environmental voice and presence within the EOP and the White House. And, the U.S. Supreme Court has held that CEQ is owed "substantial deference" in its interpretation of NEPA.

Such deference will not be afforded a White House staff office with no statutory authority. Indeed, far from being an improvement to environmental policy making in the White House, the proposal included in S 171 would reduce the statutory authority for the environment within the EOP. The White House office proposed to replace CEQ without statutory authority could be summarily abolished by the next Administration. This "improvement" would be funded at a level the fraction of that proposed for CEQ in the outgoing Bush Administration budget.

Despite several meetings with White House officials, the environmental community has yet to receive a logical and rational explanation for this proposal. Reasons given for the proposal have ranged from dismissal of the importance of the annual report, to the physical location of CEQ staff. With regard to the latter objection, the statements made by the White House are factually wrong, moreover, they beg the question of why the offices might not be moved if that is a major problem. Separation of power questions also have been raised regarding CEQ, but mysteriously the same arguments do not apply to the Council of Economic Advisors, the Office of Science and Technology Policy, the Office of management and Budget, and the U.S. Trade Representative's Office.

Most importantly, there seems to be some confusion that the functions of CEQ regarding NEPA are duplicated by EPA. This is not true. The day-to-day consultations with line agencies conducted by CEQ with the authority of the EOP is what has enabled NEPA to become an extraordinarily successful statute. If the Committee is considering that this proposal would reduce duplicative government effort, I urge you to investigate this matter further to ensure that your decisions are not made in the absence of important information. CEQ's success in administering NEPA is reflected in how few referrals have resulted because of inter-agency conflicts over the past two decades.

I am deeply concerned about the proposed transfer of the day-to-day implementation assistance to the line agencies for NEPA from the EOP to the Environmental Protection Agency (EPA). No line agency is put in a good position when it is required to oversee the implementation of other line agencies, but EPA may be among the very worst candidates for this job. EPA has perhaps the worst record in the Federal government for complying with NEPA. (Please see the attached summary analysis of EPA's compliance with NEPA). I am worried that as important as NEPA is as the foundation to U.S. environmental law, the provisions for its implementation to date under the Administration's new proposed regime amount to a simple transfer of authority, with no additional resources to do the job that CEQ is doing now. We are much more likely to see the compliance with NEPA by other agencies decline to be more on par with EPA's poor record than we are to see an overall improvement in the statute's implementation. Carol Browner recently noted that she is "appalled" at EPA's "total lack of management, accountability and discipline." Knowing that is her current assessment of her agency's capabilities, why should the Congress and the American people feel sanguine about the Administration's proposal to significantly add to her responsibilities with no plan and no additional funds.

The conflicts inherent in EPA's administration are real and not simply an academic hypothesis. For example, I would note to Senator Lautenberg EPA's recent approval of the dumping of dioxin contaminated sediments in the ocean waters off of Jersey Shore. Central to this controversy is the failure of EPA to comply with NEPA. We should be clear that what is being proposed in S 171 is that the watchdog for EPA in such cases will now be EPA. Is this good government?

Under the S 171 proposal, the President would receive the responsibility for referrals. If EPA is charged with day-to-day implementation of NEPA, considering the above, I think it would be a reasonable hypothesis to predict more referrals. I find it curious that the legislation proposed would make the President personally responsible for the resolution of these conflicts, a process I doubt the President will come to appreciate, and I worry that the existing public procedures for reviewing such referrals

will now be discarded and the decisions relegated behind the closed doors of executive privilege.

Finally, I want to emphasize the value of CEQ to past Administration's. I know that Michael Deland will address the contribution CEQ made to national environmental policy in the Bush Administration. While it is politically correct for some of us Democrats to dismiss the notion that anything good could have been accomplished by CEQ during the Reagan and Bush years, the facts would belie such assertions. Indeed, throughout its history, CEQ has provided a strong environmental voice in Administrations of both parties, a voice that has moderated bad decisions and promoted good ones. I enclose for the record too, the attached memorandum dated December 15, 1980 by Gus Speth, then Chairman of the Council on Environmental Quality, and his fellow Council members, to President Carter. Mr. Speth outlines in detail an impressive list of accomplishments by the President, initiated and implemented by CEQ. As the President of one the national conservation organizations, one of the reasons I am deeply troubled by S 171 is that it would discard the statutory authorities and staff resources that could best ensure that Vice President Gore and President Clinton could achieve an equally impressive record for the environment through their tenure in office.

Finally, I call attention to the problems of such hastily developed legislation by pointing out that the proposal in S 171 would have EPA now in charge of certain aspects of policy regarding the use of off-road vehicles, a function one might argue should be delegated to the Department of the Interior if it were to be delegated to any other agency; and, that it would give key functions to EPA regarding the Marine Mammal Commission, functions that might be more appropriately assigned to the Department of Commerce and the National Oceanic and Atmospheric Administration.

Clearly this legislative proposal has not been well conceived. I urge the Committee to reject it until it can be modified to best ensure that legislation promoted by this Committee and promulgated by this Congress represents a real change for improvement for the environmental quality of the American people.

Thank you very much for considering my views.

Respectfully submitted,

Roger McManus
Roger E. McManus



**IDAHO
CONSERVATION
LEAGUE**

P.O. Box 2671, Ketchum, Id 83340
Wood River Chapter - (208) 726-8437
Public Lands Office - (208) 726-7485

TESTIMONY OF MICHAEL MEDBERRY ON BEHALF OF THE IDAHO CONSERVATION
LEAGUE BEFORE THE SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE;
April 1, 1993

My name is Mike Medberry and I represent the Idaho Conservation League which has approximately 2,700 members. Thank you for accepting this testimony concerning the Council on Environmental Quality. The ICL has an interest in national policy relating to public land management since about two thirds of Idaho is federal land.

I am disappointed that the Clinton Administration is proposing to eliminate the Council on Environmental Quality since the Council has the potential to be the brain center for environmental policy for the United States. The Council was intended by the National Environmental Policy Act to be a permanent office serving an important function in the Executive branch. It is unfortunate that the Clinton Administration fails to recognize the potential of CEQ.

The most damaging aspect of abolishing the CEQ is that implementation of the National Environmental Policy Act will almost certainly suffer. The CEQ regulations and oversight responsibilities for implementation of NEPA are crucial to land protection in the West. These regulations are responsible for more land protection in the west than any piece of legislation that has ever moved through Congress. I do not take lightly the abolishment of the Executive agency responsible for NEPA oversight because I deal on a daily basis with agencies which implement the law. The agencies must adhere to a consistent set of NEPA standards only because there is a watchdog agency which defined the standards. When that watchdog is gone, agencies like the Federal Energy Regulatory Commission, Bureau of Land Management, and Forest Service will most likely take advantage of the absence by eviscerating their own NEPA regulations.

The Administration appears to want to accomplish 5 significant objectives with the legislation before the Committee today:

- 1) Avoid Senate confirmation of the Office of Environmental Policy director;
- 2) Reduce the White House staff and budget;
- 3) Maintain Presidential authority to delegate dispute resolution concerning NEPA issues;
- 4) Split CEQ functions between the Office of Environmental Policy and Environmental Protection Agency;
- 5) Abolish CEQ.

Instead of abolishing CEQ, the Council should be the environmental policy center of the Clinton Administration, providing moving scientific information to federal agencies so that

intelligent decisions can be made. The Council could also provide a forum for public involvement in environmental policy decisions and an arena in which to debate the merits of proposed policies. The Environmental Quality Report published by CEQ each year should be the document forming and informing U.S. environmental policy. Under the Reagan and Bush Administrations, CEQ was underfunded and ignored. By employing a little imagination, this Committee and the Administration could remodel CEQ into what it was originally intended to be.

The Administration could show its willingness to work with Congress by allowing for Senate confirmation of CEQ Council members and/or of the director of the newly created Office of Environmental Policy. It may appear to some that Senate confirmation is an unnecessary encumbrance, but in an administration hostile to natural resource conservation (as in the past decade), Senate confirmation is a buffer against extremism. As George Santayana said, "Those who forget the past are doomed to repeat it."

In whatever decision is made about CEQ, I ask for one thing above all else. Please assure that an entity exists which is funded and directed to oversee NEPA implementation and which is responsive to public input. Without oversight of the CEQ regulations implementing NEPA there will be no consistency between agencies and chaotic environmental policy will result. It is unfortunate that the Administration does not have the on-the-ground experience to recognize this and I appeal to this Committee for your support.

Please send me a copy of the record from this hearing and inform me of the outcome. I would like to present testimony in person at any subsequent hearings since I was denied the opportunity to do so this time. Thank you.



NATIONAL ASSOCIATION OF ENVIRONMENTAL PROFESSIONALS

March 31, 1993

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United States Senate
SD-458 Dirksen Senate Office Building
Washington, DC 20510-6175

RE: Proposal to Abolish CEQ

Dear Senator Baucus:

The National Association of Environmental Professionals (NAEP) submits the enclosed testimony and respectfully asks that it be entered into the hearing record of April 1, 1993 regarding the proposal to abolish the President's Council on Environmental Quality (CEQ). NAEP was established in 1975 and is an interdisciplinary professional association of persons engaged in all aspects of the environmental process including administration, planning, engineering, environmental law, research, and education. The criterion for general membership in NAEP is a minimum of three years applicable professional experience in a position of responsibility.

NAEP and its membership have been intimately involved in the principles and implementation of the National Environmental Policy Act (NEPA) which has been the responsibility of CEQ for the past 24 years. Therefore, we have a vested interest in the current proposal.

We appreciate the opportunity to submit our views on this important matter. Should you or your staff have any questions, please call me at 303-850-0930 or Susan Eisenberg, NAEP's Executive Director, at 202-966-1500.

Thank you for your consideration.

Sincerely,

Randall E. Schroeder
Chair, NEPA Working Group

NAEP

5165 MacArthur Boulevard, NW Washington, DC 20016 202-966-1500 FAX 202-966-1977

SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
HEARING ON THE PROPOSAL TO ABOLISH
THE PRESIDENT'S COUNCIL ON ENVIRONMENTAL QUALITY (CEQ)
April 1, 1993

TESTIMONY
Provided By
THE NATIONAL ASSOCIATION OF ENVIRONMENTAL PROFESSIONALS
Randall E. Schroeder - Chair, NEPA Working Group

This testimony is hereby provided by the National Association of Environmental Professionals (NAEP) in response to the current proposal to abolish the President's Council on Environmental Quality (CEQ). NAEP's membership includes over 3,500 environmental professionals working throughout the United States on a broad variety of environmental issues. We are an interdisciplinary professional association of persons engaged in all aspects of the environmental process including administration, planning, engineering, science, environmental law, research, and education. NAEP's history spans almost two decades, and since 1979 we have offered a peer-reviewed certification program for environmental professionals based on education, experience, and proven accomplishment.

In addition to our involvement on many other environmental matters, NAEP and its members have collaborated for over 20 years with CEQ regarding the provisions of the National Environmental Policy Act (NEPA). NAEP was the only professional association invited by CEQ to testify formally at hearings in 1977 on streamlining the NEPA process.

Currently, I am the chair of the NEPA Working Group within NAEP. This group includes individuals from government, industry, and consulting organizations whose primary focus is the implementation of NEPA and its governing regulations. We are the people who are responsible for developing the Environmental Impact Statements (EISs) and Environmental Assessments (EAs) that are required under NEPA. We work with NEPA every day and are keenly aware of the importance of the proper interpretation of the Act. As such, we continue to have a vested interest in the procedural requirements of NEPA, its effectiveness, and its oversight. We provide an open forum for communication among NEPA professionals, including a newsletter and an annual symposium. Lastly, we provide input to help achieve the broad goals of NEPA.

Testimony by NAEP
April 1, 1993
Page Two

Over the past years, our group has worked closely with CEQ on a number of NEPA issues. We recently provided assistance in the development and administration of CEQ's new Federal Environmental Quality Awards, which recognize excellence in federal decisionmaking pursuant to NEPA. The first awards under this program were presented to the United States Air Force and the Tennessee Valley Authority in January of this year. We feel that this new award program provides important incentive to federal agencies to comply with the spirit of NEPA and improve its implementation. We are dedicated to the continuation of this program. In addition, our group is currently in the process of developing a certification program for professionals responsible for implementing the NEPA process to ensure that they have an appropriate understanding of its procedural requirements. CEQ is providing us with input on this effort.

CEQ has also addressed or is addressing a number of issues that provide assistance and clarification to those of us who implement the regulations. CEQ has recently developed guidelines for evaluating impacts on biodiversity which has been a controversial topic. CEQ is also developing guidance for conducting cumulative impact analyses under NEPA. A good understanding of this issue is essential to minimizing broad environmental impacts that could ultimately contribute to stressed environments and species. This has always been a difficult issue in the development of EAs and EISs, and the additional guidance will be very useful.

CEQ has been responsible for oversight of NEPA in the past and present and has 24 years experience in this capacity. Now, we do not know where this oversight function would reside if CEQ is abolished, as we are unaware of any details of a specific proposal to transfer this responsibility. Regardless of its final location, there are aspects of this NEPA oversight function that are very important to those of us in NAEP and the NEPA Working Group.

It is important to realize that implementation of NEPA is a process that must be followed to arrive at environmentally sound federal decisions and not simply a document that is prepared. The steps in this process are well defined and must be followed correctly. Many attorneys with experience with NEPA court cases will tell you that successful appeals of NEPA decisions more often deal with procedural or administrative matters than technical concerns. Therefore, it is important that whoever has responsibility for oversight of NEPA procedures be very experienced and knowledgeable of NEPA implementation procedures.

Testimony by NAEP
April 1, 1993
Page Three

The oversight of NEPA is very important to this nation. It is also important that the responsibility for oversight of NEPA reside at a high level in government. NEPA is our basic national charter for protecting the environment and is intended to prevent environmental damage before it occurs. It is the nation's primary environmental law governing federal decisionmaking and can affect a broad spectrum of federal actions and policies. Therefore, those responsible for its oversight should have direct access to and substantial support from the President and his staff on matters regarding policy, implementation, and compliance.

It is also important that the entity responsible for NEPA oversight be able to do so objectively and without conflict of interest which has existed between federal departments on several environmental issues in the past. Doing so will require maintaining the appropriate checks and balances. The group with oversight responsibility should not perform any other conflicting function under NEPA. For example, the agency in charge of NEPA oversight should not be involved in preparing its own NEPA documents or reviewing NEPA documents prepared by other agencies. This function should remain independent within the Executive Branch.

In summary, the National Association of Environmental Professionals through its NEPA Working Group is actively involved with NEPA compliance and is interested in maintaining the importance and integrity of NEPA and its implementing regulations within the federal framework. We feel that the best way to ensure this is to entrust the oversight of NEPA to the agency with the most experience in this area. Although much has been accomplished in implementing NEPA in its first two decades, much remains to be done to fully implement all provisions of the Act. CEQ's unique experience with NEPA represents a solid foundation upon which even further advances can be made in carrying out the mandates of this important law. For these reasons, we respectfully urge you to carefully evaluate the need for change and proceed cautiously in entrusting the responsibility for NEPA in a manner that is in the best interests of the nation and its environment.



Working for the Nature of Tomorrow.

NATIONAL WILDLIFE FEDERATION, 1400 Sixteenth Street, N.W., Washington, D.C. 20036-2266 (202) 797-6800

Office of the President

April 1, 1993

The Honorable Max Baucus
United States Senate
Washington, D.C. 20510

Dear Max:

Today, the Senate Environment and Public Works Committee will hold a hearing on S. 171. I thank the Committee for its kind invitation to testify and regret that a previous commitment out of Washington prevents me from appearing before you. Please allow me to use this opportunity to express, on behalf of the 5.3 million members and supporters of the National Wildlife Federation, my strong support for this important legislation.

It is becoming clear that the environment will be one of the transcendent issues of the 21st century. We endorse the commitment of the Clinton Administration to give the environment a seat at the Cabinet table and the recognition that environmental protection is as vital to our nation as defense, commerce, veterans affairs and education.

In addition, we support the Administration in its decision to abolish the Council on Environmental Quality and delegate most of the functions of NEPA to the Environmental Protection Agency. We also support the decision of the Administration to give the key referral function of NEPA to the President. We appreciate the Administration's recognition that NEPA is one of this country's most important environmental statutes which must be preserved and respected at the highest levels of government. Lastly, as part of the reorganization of the White House, we are pleased that the President has created an Office of Environmental Policy within the White House and believe this office has the potential to accomplish much significant work on behalf of the environment.

We urge the Environment and Public Works Committee to act expeditiously on S. 171 to ensure the swift elevation of EPA to Cabinet level. There is much important environmental work to be done and the Clinton Administration is creating the tools to accomplish these formidable tasks. We hope you and your colleagues will support the President in this important first step. Thank you for your consideration of our views.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jay", written over the printed name.

JAY D. HAIR

JDH/mm



Naturam Expellas Furca

Tamen Usque Recurret

WISE USE MOVEMENT

17 February 1993

The Honorable Al Gore
Vice President
The White House
1600 Penn Ave N.W.
WA D.C. 20500

Dear Vice President Gore:

The Wise Use Movement strongly opposes your decision to eliminate the Council on Environmental Quality (CEQ). While we recognize that symbolism was required to portray to the public a reduction in White House staff, we do not believe the complete loss of CEQ is wise or warranted.

President Carter also sought to eliminate CEQ. Fortunately, the Congress did not agree and CEQ went on to coordinate the world's first government assessment of environmental problems - Global 2000.

The role of CEQ as a guardian of the National Environmental Policy Act (NEPA) can not be assumed by an agency, even EPA, which itself must be subject to NEPA. An agency can not be both judge and defendant of our foremost environmental statute.

An additional concern is that even under the Reagan and Bush administrations, CEQ was accessible to the public. Placing its functions within the White House itself means that the public must fight through a blizzard of security to even have a meeting with White House staff.

In summary, we would urge you to reexamine your CEQ decision. It can once again play a strong role in environmental policy and should be given an opportunity to expand its work in this area.

Sincerely,

David E. Ortman
President

cc: Senator Max Baucus
Representative Gerry Studds

P.O. Box 17804, Seattle, WA 98107



March 15, 1993

The President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

On behalf of World Wildlife Fund and its 1.2 million members, I write concerning the role of the new Office of Environmental Policy in National Environmental Policy Act (NEPA) oversight. We strongly support the views expressed to you by a coalition of environmental organizations in their March 3rd letter, which was sent when I was out of the country.

From WWF's perspective, it is most important that NEPA oversight and implementation occur within the Executive Office of the President. As the principal policy tool for integrating environmental concerns into government decisionmaking through the impact assessment process and as a key avenue for eliciting views from the public, review and implementation of NEPA should take place at the highest level — at the White House and not at a line agency or department with a less comprehensive mandate. Given the Office of Environmental Policy's charge to coordinate federal environmental policy, it seems ideally suited to play that critical NEPA oversight role.

It is most important, too, to retain a statutory basis for a White House environmental office. Just as the directors of the Office of Environmental Quality and of the Office of Science and Technology Policy are, by statute, appointed by the President with the advice and consent of the Senate, the Office of Environmental Policy needs similar statutory underpinning. The integration of environmental concerns across the government requires an office of stature, credibility, continuity, and long term accountability comparable to your Office of Science and Technology Policy.

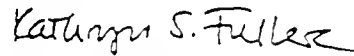
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It was a great honor and pleasure for me to meet you so soon after your inauguration and so very encouraging to hear firsthand not only of your commitment to the environment, but also of the personal attention you are devoting to a broad range of environmental and natural resource issues. I look forward with enthusiasm to assisting you and your administration however possible in effecting positive change.

Respectfully,

A handwritten signature in cursive script that reads "Kathryn S. Fuller".

Kathryn S. Fuller
President

SEC. 112. TERMINATION OF THE COUNCIL ON ENVIRONMENTAL QUALITY AND TRANSFER OF FUNCTIONS.

(a) *TRANSFER OF FUNCTIONS OF THE COUNCIL ON ENVIRONMENTAL QUALITY.*—(1) *Except as provided under paragraph (2), all functions of the Council on Environmental Quality under titles I and II of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and under any other law, are transferred to the Secretary. The Secretary is authorized to take all necessary action, including the promulgation of regulations, to carry out these functions.*

(2) *Referrals of interagency disagreements concerning proposed major Federal actions significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 102(2)(C)) and concerning matters under section 309(b) of the Clean Air Act (42 U.S.C. 7609(b)) shall be made to the President for resolution.*

(b) *TERMINATION OF THE COUNCIL ON ENVIRONMENTAL QUALITY.*—(1) *Section 204 of the National Environmental Policy Act (42 U.S.C. 4344) is amended by striking out “Council” and inserting in lieu thereof “Secretary of the Environment”.*

(2) *Sections 202, 203, 205, 206, 207, and 208 of the National Environmental Policy Act (42 U.S.C. 4342, 4343, 4345, 4346, 4346a, and 4346b) are repealed.*

(3) *The heading for title II of the National Environmental Policy Act is amended to read as follows:*

“TITLE II

“ENVIRONMENTAL QUALITY REPORT”.

(c) *REFERENCES IN FEDERAL LAW.—Reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or relating to the Council on Environmental Quality—*

(1) with regard to functions transferred under subsection (a)(1), shall be deemed to refer to the Secretary; and

(2) with regard to disagreements and matters described under subsection (a)(2), shall be deemed to refer to the President.

(d) *AVAILABILITY OF FUNDS.—Unobligated funds available to the Council on Environmental Quality shall remain available to the Department until expended for the gradual and orderly termination of the Council and transfer of Council functions as provided in this Act.*

(e) *SAVINGS PROVISIONS.—(1) All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—*

(A) which have been issued, made, granted, or allowed to become effective by the President, by the Council on Environmental Quality, or by a court of competent jurisdiction, in the performance of func-

tions of the Council on Environmental Quality, and

(B) which are in effect at the time this Act takes effect, or were final before the effective date of this Act and are to become effective on or after the effective date of this Act,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary of the Environment, or other authorized official, a court of competent jurisdiction, or by operation of law.

(2) The provisions of this Act shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending before the Council on Environmental Quality at the time this Act takes effect, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this paragraph shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(3) The provisions of this section shall not affect suits commenced before the date this Act takes effect, and in all such suits, proceedings shall be had, appeals taken, and

judgments rendered in the same manner and with the same effect as if this Act had not been enacted.

(4) No suit, action, or other proceeding commenced by or against the Council on Environmental Quality, or by or against any individual in the official capacity of such individual as an officer of the Council on Environmental Quality, shall abate by reason of the enactment of this Act.

(5) Any administrative action relating to the preparation or promulgation of a regulation by the Council on Environmental Quality may be continued by the Department or the President with the same effect as if this Act had not been enacted.

(6) The contracts, liabilities, records, property, and other assets and interests of the Council on Environmental Quality shall, after the effective date of this Act, be considered to be the contracts, liabilities, records, property, and other assets and interests of the Department.



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